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A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

Dennis R. Patrick, Chairman

James H. Quello

Patricia Diaz Dennis

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radiotelegraph requirements	X-1628 - 1633

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 1989; Released: February 13, 1989

By the Commission:

I. INTRODUCTION

1. We have before us a petition for reconsideration filed August 5, 1988, by the Radio Officers Union and American Radio Association (ROU/ARA) of the Private Radio Bureau's (the Bureau) *Memorandum Opinion and Order*, 3 FCC Rcd 4127 (Spec. Serv. Div. 1988) (*Order*), approving the above-captioned requests for exemption from the manual Morse code radiotelegraph requirements of Title III, Part II of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. §§ 351-354 and of Chapter IV of the International Convention for Safety of Life at Sea, 1974, TIAS 9700 (Safety Convention). American Institute of Merchant Shipping and Puerto Rico Marine Management, Inc. (AIMS and PRMMI) and Exxon Communications Company (Exxon) filed oppositions, and ROU/ARA filed a reply.[1]

2. For reasons discussed below we find that the routes or conditions of the voyages and other circumstances are such as to render it unnecessary to require the ships to comply with the manual Morse code radiotelegraph requirements of the Communications Act or Safety Convention. Therefore, we will affirm the exemptions granted by the Bureau.

II. BACKGROUND

3. The radiotelegraph exemption requests at issue are for various voyages between the West Coast of the 48 contiguous states and Alaska and Panama, and between the Gulf or East Coast and Puerto Rico. The voyages between the 48 contiguous states and Alaska or Puerto Rico require exemptions only from the radiotelegraph requirements of the Communications Act. The voyages to Panama require exemptions from the radiotelegraph requirements of the Safety Convention as well.[2]

4. Without the exemptions, U.S. passenger ships that carry more than 12 passengers and U.S. cargo ships of 1600 gross tons and upward sailing on domestic or international voyages [3] are required to carry the following:

a. A main and reserve radiotelegraph (manual Morse code) transmitter and receiver.

b. A radiotelegraph auto alarm consisting of an automatic alarm signal keying device and an auto alarm signal receiver which transmit and receive, respectively, the international radiotelegraph alarm signal.

c. An MF radiotelephone transmitter, receiver and antenna capable of communicating ship-to-ship over a distance of 150 nautical miles.

d. A radiotelephone watch receiver for the distress frequency 2182 kHz.

e. An automatic radiotelephone alarm signal generator.

f. A radio direction finder.

g. A radar installation. (Ships of 10,000 gross tons and upward must have two radar installations.)

h. A radiotelephone installation that operates in the VHF band and is capable of operating on the international distress, safety and calling frequency 156.8 MHz.

In addition, a cargo ship that is equipped with a radiotelegraph auto alarm must carry at least one radio officer who has had at least six months previous service as a radio officer on board U.S. ships. A radio officer must hold a first or second class radiotelegraph operator license issued by the Commission and be licensed as a radio officer by the U.S. Coast Guard.

5. Section 352(b) of the Communications Act permits the Commission to exempt cargo ships from these requirements if in the course of their voyages they do not go more than 150 nautical miles from the nearest land and if the Commission considers that the route or conditions of the voyages or other circumstances are such as to render a radio station unreasonable or unnecessary for the purposes of the Act. The Safety Convention also permits exemptions. Regulation 5 of Chapter IV of the Safety Convention permits Administrations to grant exemptions where the maximum distance of the ship from the shore, the length of the voyage, the absence of general navigational hazards, and other conditions affecting safety are such as to render the radiotelegraph station unreasonable or unnecessary. No maximum distance from land is specified.

6. In evaluating an individual request for exemption from the radio requirements of the Communications Act and/or Safety Convention, we review the radio equipment carried on the ship, its ability to communicate with shore stations and other ships, and its capability to come to the rescue of other ships sailing in the same area. At a minimum, a cargo ship seeking an exemption from the radiotelegraph provisions must sail on voyages within 150 nautical miles of the nearest land and carry radio equipment sufficient to maintain communications with shore stations and ships along the routes of the voyages. Other conditions or circumstances concerning the particular ship and the intended voyage(s) are considered on a case-by-case basis. Additionally, the Commission has provided a general exemption, 47 C.F.R. § 80.836(c), for ships with specified state of the art communications equipment on voyages along the coasts of the 48 contiguous states. A ship that meets the requirements of that rule may sail without a radiotelegraph station. No other authorization is required. The Commission adopted Section 80.836(c) after

a rule making proceeding in which it carefully evaluated all viewpoints, including many of the same arguments made here by ROU/ARA. *Amendment of Part 83*, 89 FCC 2d 40 (1982), *aff'd sub nom. American Radio Ass'n v. FCC*, 690 F.2d 334 (2d Cir. 1982), *cert. denied*, 460 U.S. 1051 (1983).

III. DISCUSSION

7. The voyages covered in the exemptions at issue are essentially extensions of the voyages permitted by the general exemption in Section 80.836(c). In each case the ship operator is to carry at least as much radio equipment as Section 80.836(c) requires. In opposing the exemptions, ROU/ARA reiterated arguments made in the general exemption rule making proceeding, *Amendment of Part 83*, *supra*. In brief, they argued:

> a. The Commission lacks statutory authority to grant the exemptions;
>
> b. Granting the exemptions would have an adverse impact on national security by diminishing the pool of manual Morse code radiotelegraph operators available for national defense needs; and
>
> c. Granting the exemptions would decrease safety of ships at sea.

8. The Bureau found that the Commission had statutory authority to grant the exemptions, that there would be no adverse impact on national security, and that safety of the exempted ships or other ships that might need to communicate with them in distress situations would not be decreased. In discussing the safety issue, the Bureau emphasized that the communications equipment the ships were to carry would provide communications reliability and capability at least as great as that obtained with manual Morse code radiotelegraphy.

9. ROU/ARA's petition for reconsideration once again argues the same points -- statutory authority, national security, and safety -- in greater detail.

A. Statutory Authority

10. It is clear from the plain meaning of 47 U.S.C. § 352(b) that the Commission has the statutory authority to grant the exemptions. Section 352(b) provides in pertinent part,

> the Commission may, if it considers that the route or the conditions of the voyage or other circumstances are such as to render a radio station unreasonable or unnecessary for the purposes of [Title III, Part II of the Communications Act], exempt from [its] provisions any ship or class of ship which falls within any of the following descriptions: . . . (2) Cargo ships which in the course of their voyage do not go more than one hundred and fifty nautical miles from the nearest land . . . .

In addition, this issue was raised by the ROU/ARA and thoroughly treated in the general exemption proceeding, *Amendment of Part 83*, *supra*, at 51-53, and the Commission's authority was upheld in the courts on appeal, *American Radio Ass'n v. FCC*, *supra*. Thus, the Commission clearly has authority to grant such exemptions.

11. In their petition for reconsideration ROU/ARA argue that the nature of the decision on the exemption requests was such as to require notice and comment rule making pursuant to the Administrative Procedure Act. ROU/ARA Petition, 6. Further, ROU/ARA contend that the decision exceeds the authority granted in Section 352(b), which permits exemptions but does not permit the Commission to eliminate telegraph requirements completely, and that the Bureau has effectively eviscerated Sections 351(a) and 352(b) of the Communications Act and Regulations 3 and 5, Ch. IV of the Safety Convention by waiver contrary to the holding of *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969). ROU/ARA Petition, 4-9.

12. ROU/ARA's argument that the nature of the Bureau's decision required notice and comment rule making and was not appropriate for an adjudicatory proceeding is without merit. Nothing in the Communications Act or the Administrative Procedure Act requires a rule making proceeding to determine if exemptions are warranted. Moreover, the Supreme Court has stated that "the choice between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency." *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947). As all the affected parties, the unions and the shipping owners and operators, have had an opportunity to present their arguments before the Commission and all the pertinent facts and arguments relevant to the particular situations involved have been considered, proceeding through an adjudication here is reasonable and appropriate.

13. In authorizing exemptions for 22 ships on voyages not more than 150 nautical miles from land between the West Coast and Alaska and Panama and the East and Gulf Coasts and Puerto Rico, the Bureau did not eliminate telegraphy requirements completely or exceed the authority in Section 352(b). ROU/ARA state, however, that the conditions of voyages to Alaska, Puerto Rico and Panama will at times be perilous. They say that the Bureau considers this irrelevant, and "has thus effectively eviscerated" the requirements of the Communications Act and the Safety Convention, which require that ships be exempted from radiotelegraph requirements only on a case-by-case basis after careful consideration of the individual circumstances of a voyage. ROU/ARA Petition, 5. The Bureau, however, based these exemptions on individual requests that set forth the voyages to be undertaken as well as the equipment to be carried, and safety concerns were thoroughly discussed at paras. 12 - 22 of the Bureau's *Order*. Additionally, the *Order* made clear that the exemptions granted were not based on a lack of significant weather and sea conditions but rather on advances in technology that made other radio equipment available that is equal or superior to manual Morse code radiotelegraphy. As to any suggestion that it is inappropriate to discuss several exemptions for similar vessels and voyages in one document, Section 352(b) provides that the Commission may exempt "any ship or *class of ships*" (emphasis supplied).

14. Citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), ROU/ARA state that the purpose of exemptions and waivers is to show that a particular rule should not apply to an individual situation because of specific unique reasons, parties have to plead with particularity the facts that warrant a waiver, and agencies should not eviscerate rules by waiver. ROU/ARA Petition,

7-9. Yet here the record is clear as to the particular facts that warrant each exemption granted: the equipment to be carried and the routes of the voyages are specified in each exemption request. Further, the *Memorandum Opinion and Order*, at para. 25, specified the 150 nautical mile limitation and the equipment and operating conditions that each ship must have.

15. ROU/ARA take issue with the Bureau's finding that the exemptions are a logical extension of the general exemption embodied in Section 80.836(c), stating that the rationale of that exemption does not apply -- that ships would travel in a limited area along the coast and that the coast was patrolled by the Coast Guard. ROU/ARA Petition, 7. That, however, was *not* the rationale stated in the general exemption rule making proceeding. There the Commission said:

> After carefully considering the comments in this proceeding we conclude that, where ships meet specified radio equipment and other safety requirements, it is unreasonable and unnecessary to require these ships to meet the radiotelegraphy requirement set forth in Section 351 of the Act . . . .[T]his conclusion is based primarily on the significant advances that have occurred in radiotelephony in the 45 years since enactment of Section 351 and on factors relating to the changing characteristics of the maritime distress system. 89 FCC 2d at 53.

As the quoted material demonstrates, the exemptions at issue are a logical application of the rationale for the general exemption.

B. National Security

16. The grant of the subject exemption requests would have no impact on national security. The U.S. Navy does not rely on manual Morse code telegraphy for ship-to-ship or ship-to-shore communications. Thus cargo ships do not need radiotelegraph operators to communicate with the Navy. Additionally, the Navy does not even maintain a watch on the 500 kHz Morse code distress frequency. Further, we asked the Navy whether it had any objections or concerns regarding the requested exemptions. Letter from Dennis R. Patrick, Chairman, to Admiral C.A.H. Trost (February 3, 1988). The Navy replied that it had "no objection to granting the proposed exemptions." Letter from C.A.H. Trost, Chief of Naval Operations to Chairman, Federal Communications Commission (April 22, 1988).

17. ROU/ARA refers to a letter dated May 6, 1988, from Lawrence Layman, Director, Space, Command and Control, Office of the Chief of Naval Operations, to ROU, which they attempt to interpret as support for their position. ROU/ARA Petition, 22-23. Yet as the Bureau made clear, Admiral Layman had confirmed that his letter "does not alter nor supersede the . . . position [of the Chief of Naval Operations stated in his April 22 letter]." Letter from Admiral Lawrence Layman to Mr. R.H. McNamara (June 3, 1988). In view of the Navy's position, ROU/ARA's continued assertion that the exemptions would have an adverse impact on national security is not justified.

C. Safety

18. ROU/ARA's petition discusses safety arguments in great detail and includes several declarations of persons with personal knowledge of individual distress incidents to illustrate their concern that radiotelegraphy is essential in distress situations and that alternative means of communication are unreliable.

19. We have carefully evaluated the material submitted by ROU/ARA even though this type of material should not be submitted on reconsideration. Section 1.106(b) of the Rules limits reconsideration based on factual matters to "facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or . . . facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity." *See WNOW, Inc.*, 38 FCC 471, 474 (1965); *cf. Valley Telecasting Co. v. FCC*, 336 F.2d 914 (D.C. Cir. 1964).

20. The factual material concerning safety in ROU/ARA's petition for reconsideration has been continuously available to ROU/ARA; some of it relates to incidents many years in the past. ROU/ARA made known their opposition to these exemptions as early as December 1987 and filed a lengthy pleading opposing them. They could have included the factual material and analysis in that pleading instead of waiting until reconsideration. Because safety issues are raised, however, we will consider the pleadings.

21. Throughout ROU/ARA's pleading is the suggestion that granting the exemptions would compromise safety because radiotelegraphy is superior to any other system for distress and safety communications. We rejected that argument in 1982 when we adopted the general exemption. *Amendment of Part 83, supra, passim.* The argument is even less valid today. The systems to be carried by these ships provide multiple pathways for distress and safety communications, and this redundancy increases the probability that vital messages will be received. Additionally, because knowledge of Morse code is not required, almost any person aboard ship could be trained to operate these systems, providing greater flexibility in distress situations. While the anecdotal material submitted by ROU/ARA concerning the use of radiotelegraphy is informative, it is not determinative.

22. ROU/ARA also suggest that exempted ships will no longer be part of the pool of large ships that can render assistance to each other as they will not be able to exchange distress messages with other large ships. ROU/ARA Petition, 9. To the contrary, the ships will carry 500 kHz (radiotelegraph) auto alarm receivers and auto alarm generators and thus will be able to receive and send radiotelegraph distress alerts. Additionally, all large ships, both those fitted with radiotelegraphy and those without it, are required to keep a telephony watch on 2182 kHz for distress and safety purposes and have a 2182 kHz auto alarm watch receiver and signal generator. The range and other propagation characteristics of 500 kHz and 2182 kHz are similar. Ships can also communicate with each other by other systems, such as HF and VHF telephony, radioteletype, and, increasingly, via satellite systems. In sum, because of the diversity of equipment the ships will carry, safety will not be diminished by granting the exemptions.

23. Reliance on radiotelegraphy is declining. One indication of this decline is the closure of several high seas telegraphy public coast stations within the U.S. within the past few years because of declining traffic and increased use of other systems such as narrow-band direct-printing and satellite communications. In recent years the Commission has approved discontinuation of service at WPA, Port Arthur, Texas (November 22, 1983), WSL, Amagansett, N.Y. (August 14, 1984), WOE, Lantana, Florida (June 20, 1986), KCC, Corpus Christi, Texas (December 31, 1986), and WMH, Baltimore, Maryland (May 6, 1988). On the other hand, the number of ships fitted with ship earth stations is increasing and is now about 6,000 worldwide. Ocean Voice, October 1987 at 7, 24-25; July 1988 at 30-31. Additionally, as of this date Norway, Liberia, Singapore, Finland, Sweden, the Bahamas, Canada, and Panama have notified the International Maritime Organization (IMO) of their determinations that modern systems are equivalent to the main radiotelegraph installation of current Safety Convention requirements. These equivalencies vary in their details but all reflect a movement away from traditional manual Morse code telegraphy and a dedicated operator/maintainer to modern telephone and data services. Moreover, and quite significantly, ships under 1600 gross tons have never been required to carry radiotelegraph equipment and sail throughout the world without communications problems. Fitting ships with satellite and other modern communications equipment and dispensing with manual Morse code radiotelegraphy will not reduce their safety nor the safety of other vessels that may need to communicate with them in distress situations.

24. Concerning the specific routes to be followed, the route to Alaska is along the coast of Canada, and all the proposed voyages are confined to North and Central America. It is also significant to note that Canada provides an exemption for ships of 1600 gross tons and upward that are fitted with one VHF, one MF, and one MF-HF radiotelephone installation for voyages north of 17 degrees 15 minutes North Latitude within 600 nautical miles of the American continent. 1978 Can. Gaz. Pt. II, 992, *as amended*, 1983 Can. Gaz. Pt. II, 1498. That covers most of the coast of Mexico and northward. In addition, Canada has filed equivalency statements with the IMO, under which a ship can be fitted with a ship earth station satellite terminal in lieu of its main radiotelegraph installation for any voyage, IMO doc. SLS.14/Circ. 30, January 18, 1983, or in lieu of any radiotelegraph installation for "occasional" international voyages, IMO doc. SLS.14/Circ. 8, March 9, 1981.

25. ROU/ARA make a number of additional points which require comment. ROU/ARA state that the poor safety record of radiotelephone equipped vessels is illustrated by loss rate of fishing vessels, which they say are generally equipped with radiotelephone. ROU/ARA Petition, 15. As pointed out by AIMS and PRMMI, the loss rate of fishing vessels does not support the theory that the type of radiotelephone and data equipment to be carried by the exempted large cargo vessels will cause a similar loss rate. The loss rate of fishing vessels is tied more to their size and operating conditions and the fact that they are not required to meet the same safety standards as vessels of similar size that are covered by domestic legislation and the Safety Convention. AIMS and PRMMI Opposition, 12.

26. ROU/ARA state that the requirement that exempted vessels have the capability of operating and maintaining all distress and safety systems at sea is not sufficiently rigorous because the highest level of government certification required is the general radiotelephone operator license, and the knowledge necessary to obtain that license does not include the ability to maintain modern sophisticated electronic systems. ROU/ARA Petition, 17-18. The general radiotelephone operator license is the highest class of radiotelephone license issued by the Commission and is required by the Commission. *See* 47 C.F.R. § 80.159(c). Further, Section 80.169 of the Commission's Rules, 47 C.F.R. § 80.169, requires those licensees sailing on the subject exempted vessels also to have a ship radar endorsement which demonstrates knowledge of proper installation, servicing and maintenance of ship radar equipment. We are not, however, relying solely on a class of license or on the ship operator's theoretical commitment to safety in fulfilling this requirement. The same modern systems that are to be used for safety are the ones used for everyday navigation and communication aboard the ships. It is in the operator's immediate self-interest to keep these systems operational.

27. In answer to a concern raised by ROU/ARA, the Bureau stated, at para. 20 of the *Order*, that sufficient incentives and enforcement tools exist to ensure compliance with the 150 mile limitation, noting that each of the ships must have an annual inspection by the Commission and a routine inspection of logs would reveal any nonconforming voyages. ROU/ARA took issue with this by stating that the quality of FCC inspections had deteriorated. ROU/ARA Petition, 19. They illustrated the alleged poor quality of inspections by stating that the Commission has not established a standard for connecting the 500 kHz autoalarm to a tape recorder so an alert can be retransmitted. Therefore it is left up to the technician on board and the inspector to decide on the effectiveness of the connection between the ship's autoalarm and recorder. ROU/ARA Petition, Att. D, 2. It is not clear why a standard is necesssary or desirable. In any event the existence of a standard has no bearing on the quality of FCC inspections or compliance with the 150 mile limitation. ROU/ARA further illustrated the alleged poor quality of FCC inspections by stating that FCC inspectors had allowed the LOUISIANA BRIMSTONE to sail for months under the general exemption without a radio officer or anyone holding a radiotelephone operator license. ROU/ARA Petition, 19; Att. F, 1-2. In fact, FCC inspectors allowed the LOUISIANA BRIMSTONE to sail pursuant to a specific exemption dated June 29, 1987. It does not operate under the general exemption. No violation occurred.

28. The *Order* requires the exempted ships to participate in the Automated Mutual-Assistance Vessel Rescue (AMVER) system when on voyages of more than 24 hours. *Order*, para. 25. ROU/ARA questions the worth of AMVER by stating that the Coast Guard called six to eight ships on 500 kHz during a distress situation in 1981 involving the PRINSENDAM and that none responded. ROU/ARA Petition, 11; Att. A, 3. The assumption that these calls were based on AMVER information is hearsay and not based on information known to the declarant. Further the declarant does not indicate whether the alleged 500 kHz calls were alarm signals, which would have activated the vessels' auto alarms, or whether they were manual Morse code messages. It should also be noted that

one reason for requiring exempted ships to participate in AMVER is to provide the Coast Guard with the ship's location in case of a distress situation; it is not just to be able to call them to aid others.

IV. DECISION

29. In view of the discussion above, it is clear that the Commission has statutory authority to grant the exemptions, that there is no adverse impact on national security, and that there is no adverse impact on safety.

30. IT IS THEREFORE ORDERED that the petition for reconsideration filed by ROU/ARA IS DENIED.

31. IT IS FURTHER ORDERED that the July 5, 1988, *Memorandum Opinion and Order* of the Private Radio Bureau IS AFFIRMED.

32. IT IS FURTHER ORDERED that the motion for stay pending reconsideration filed by ROU/ARA IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] ROU/ARA also filed a motion for stay of the Order pending reconsideration. That request is mooted by our action here.

[2] Section 352(b) of the Communications Act, 47 U.S.C. § 352(b), allows the Commission to grant such exemptions in cases in which certain specific requirements are met. Regulation 5 of Chapter IV of the Safety Convention provides for exemptions from its requirements. *See* para. 5 *infra*.

[3] For the purposes of the Communications Act and Safety Convention ships are classified either as passenger ships or cargo ships. *See* 47 U.S.C. § 153(w) and Chapter I, Regulation 2(f) and (g) of the Safety Convention.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-88-216

Application for authority to acquire and operate facilities for service to Djibouti.

ORDER AUTHORIZATION AND CERTIFICATE

Adopted: February 3, 1989; Released: February 13, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on September 26, 1988 by American Telephone and Telegraph Company (AT&T), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate facilities for direct service to Djibouti. The application was placed on public notice on October 5, 1988. Comments were filed by TRT Telecommunications Corp. (TRT) and AT&T filed an Opposition to the comments.

2. In its Comments, TRT states that it questions the agreement between AT&T and its correspondent in Djibouti whereby AT&T will provide three wholly-owned circuits in the TAT-6 cable and its correspondent will provide three wholly-owned circuits in the SEA-WE-ME cable. TRT argues that the normal and accepted arrangement in the provision of direct services involves each party providing 50% of the international facilities utilized. AT&T states that although a 50-50 facility arrangement is common it is not the exclusive means of establishing international facilities. In support of the proposed arrangement, AT&T cites previous orders where "whole circuit" arrangements have been authorized in the public interest.[1] In this case, AT&T notes that the TAT-6 circuits it will provide have a lower net book cost than the SEA-WE-ME circuits which its correspondent will provide, resulting in a benefit to its ratepayers. In view of these circumstances, we find that the proposed arrangement is acceptable.

3. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Djibouti by AT&T.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-216 IS GRANTED, and AT&T is authorized to:

a. use for service to Djibouti three wholly-owned voice-grade circuits in the TAT-6 cable;

b. lease from the French PTT a one-half interest in three voice-grade circuits in transiting facilities between St. Hilaire and Marseilles;

c. make available to its correspondent in Djibouti on an IRU basis a one-half interest in five voice-grade circuits in the TAT-6 cable;

d. lease from the French PTT a one-half interest in five voice-grade circuits in transiting facilities between St. Hilaire and the Pleumeur Bodou earth station and five voice-grade circuits between that earth station and an appropriate satellite over the Indian Ocean; and

e. use said facilities together with matching and other facilities provided by AT&T's correspondent in Djibouti to establish eight voice-grade circuits for the provision of AT&T's regularly authorized services between the U.S. and Djibouti.

5. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between AT&T and its correspondent in Djibouti, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

6. No substantial changes inconsistent with this or any other relevant Commission order shall be made before final execution of an IRU agreement between AT&T and correspondent in Djibouti, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

7. This authorization is effective on its adoption date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

8. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] *See* American Telephone and Telegraph Company, Memorandum Opinion, Order and Authorization, File No. P-C-7022-14, (released November 7, 1979).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

VALU-LINE OF WICHITA FALLS, INCORPORATED — File No. I-T-C-89-025

Application for authority to operate as an international resale carrier.

NATIONAL TELEPHONE EXCHANGE, INCORPORATED — File No. I-T-C-89-027

Application for authority to operate as an international resale carrier.

TELECOMMUNICATIONS INTERNATIONAL INCORPORATED — File No. I-T-C-89-028

Application for authority to operate as an international resale carrier.

CENTRAL TEXAS LONG DISTANCE, INCORPORATED — File No. I-T-C-89-029

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 2, 1989; Released: February 13, 1989

By the Chief, International Facilities Division:

1. The above-captioned applications, filed on November 17 and 18, 1988, respectively, by Valu-Line of Wichita Falls, Incorporated, (VLWF), National Telephone Exchange, Incorporated, (NTX), Central Texas Long Distance, Incorporated (CTLD) and Telecommunications International, Incorporated (TCI) request authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The applications were placed on public notice on November 30, and December 7, 1988. No comments were received.

2. The applicants are already providing domestic resale services. They now propose to resell international switched voice services in competition with other common carriers already providing resale of such services. In recent authorizations of new entrants the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by VLWF, NTX, CTLD and TCI.

4. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-89-025, I-T-C-89-027, I-T-C-89-028 and I-T-C-89-029 ARE GRANTED, and

a) VLWF, NTX and CTLD are authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos.1 and 2, MCI's Tariff F.C.C. No.1, and US Sprint's Tariffs F.C.C. Nos.1 and 2 between the U.S. and those points listed in those tariffs; and

b) TCI is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos.1 and 2 and Allnet's Tariff F.C.C. No.1 between the U.S. and those points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicants and their correspondents shall be filed with the Commission within 30 days of its execution.

6. IT IS FURTHER ORDERED that the applicants shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicants shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1987).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li ,
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in the Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc. 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of High Country
Broadcasting Corporation,
Former Licensee of FM Broadcast
Station KRIM (formerly KAFM),
Payson, Arizona

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: December 2, 1988; Released: February 13, 1989

By the Commission:

1. The Commission has before it for consideration: (a) a *Memorandum Opinion and Order* (*MO & O*), released June 21, 1988; and (b) an Application for Review thereof, filed June 28, 1988, by High Country Broadcasting Corporation (High Country), former licensee of FM Broadcast Station KRIM (Formerly KAFM), Payson, Arizona.

2. The *MO & O* dismissed as untimely-filed High Country's Petition for Reconsideration, and upheld an earlier action (*Order*) imposing a forfeiture against High Country in the amount of$5,000.00 for the willful and repeated violation of Section 310(d) of the Communications Act of 1934, as amended, and Sections 73.3613(a)(1) and 73.3615 of the Commission's Rules. As explained more fully in the Notice of Apparent Liability against High Country, released January 25, 1988, the Mass Media Bureau determined that High Country twice engaged in an unauthorized transfer of control, and failed to timely file copies of a network affiliation agreement and an ownership report.

3. The *Order* imposing the forfeiture against High Country was released on March 22, 1988. High Country filed its Petition for Reconsideration thereof on April 27, 1988. The Chief, Mass Media Bureau, acting on delegated authority, and relying on Sections 405 of the Communication's Act of 1934, as amended, and 1.106 of the Commission's Rules, determined that High Country's Petition for Reconsideration had not been filed within 30 days of public notice of the *Order*, was therefore procedurally defective, and consequently subject to summary dismissal. *See* 47 U.S.C. Section 405. Accordingly, on June 21, 1988, the *MO & O* dismissing High Country's Petition for Reconsideration was adopted and released.

4. High Country filed its one page "Petition for Review" on June 28, 1988, requesting a review on the merits of its April 27, 1988, Petition for Reconsideration.[1] We have considered the merits of all the arguments contained in the documents before the Commission in this proceeding (including High Country's Response to the NAL, its Petition for Reconsideration and its "Petition for Review"). We find no substantive or procedural basis for disturbing the staff's actions with respect to the arguments already raised and rejected.[2] The new arguments raised by High Country are the following:

a. The Commission has not shown that High Country failed to file an Ownership Report in 1984; all that it has shown is that the Commission's files were devoid of such a Report.

b. The Commission was arbitrarily enforcing its now-abolished rule, requiring radio stations to file network affiliation agreements, against High Country.

c. The Commission's holdings in *Deer Lodge Broadcasting, Inc.*, 86 F.C.C. 2d 1066 (1981); *Radio WAVS, Inc.*, 92 F.C.C. 2d 1037 (1982); and *Vernon Broadcasting, Inc.*, 60 R.R. 2d 1275 (1986), require that the forfeiture imposed against High Country be reduced.

d. High Country has been denied due process of the law because of the Commission's alleged delay in resolving the proceeding.

5. After careful consideration of these arguments, and the circumstances of this case, we are not persuaded to rescind or reduce the forfeiture. As to its argument concerning the filing of its 1984 Ownership Report, we note that High Country has failed to present any evidence which would indicate it filed such a report. Instead, High Country attempts to place the burden on the Commission to prove that the Commission did not lose or misfile the document. We presume that documents properly filed with the Commission reach the correct file or office. A party seeking to demonstrate the contrary may present evidence of filings, such as a copy of the relevant document, stamped by the Secretary of the Commission (which parties may obtain at the time of filing the document). As High Country has not presented such evidence, its unsupported allegation in this regard must fail.

6. The amendment of Section 73.3613(a)(1), effective July 22, 1985, eliminating the provision requiring radio stations to file network affiliation agreements, does not excuse the failure of High Country to file such an agreement as was required of it prior to the rule change. *See Hanson R. Carter*, 23 F.C.C. 2d 511 (1970) (Licensee must comply with rules in force at the time and will not be excused because their conduct would not have been a violation under a later version of the rules.) Additionally, there is no requirement that the Commission notify licensees in advance as to the Commission's intentions regarding its policies for enforcing its Rules. *Pacific Broadcasting Corporation*, 47 F.C.C. 2d 818 (1974).

7. We are not persuaded by petitioner's claim that the amount of the forfeiture imposed in this proceeding is excessive in light of the cases it cites. It is the Commission's policy to review the merits of the cases under its consideration on a case by case basis. The forfeitures imposed by the Commission in *Deer Lodge* and *Vernon Broadcasting* were not for unauthorized transfers of control. In *Radio WAVS*, the Commission held that control of the station had not been prematurely transferred to a prospective purchaser and therefore did not impose a forfeiture. Here, on the other hand, there have been two separate unauthorized transfers of control of KRIM, with the former licensee relinquishing financial and managerial control in each instance. Accordingly, it is our view

that the forfeiture being imposed herein, pursuant to the statutory authority of Section 503(b) of the Communications Act, as amended, is reasonable in light of the entire record in this proceeding, including the type of violations, the mitigating factors involved, and the financial condition of the licensee.

8. Finally, concerning the High Country's assertion that its due process rights have been transgressed, we note that the Commission has assessed the forfeiture within the statutory time contraints as established by Congress in Section 503(b)(6)(A) of the Communications Act of 1934, as amended. Thus, we find no basis with which to disturb the imposition of the forfeiture liability.

9. Accordingly, IT IS ORDERED that, pursuant to Section 1.115(g) of the Commission's Rules, the Application for Review, filed June 28, 1988, by High Country Broadcasting Corporation, former licensee of Station KRIM(FM), Payson, Arizona, IS DENIED.

10. IT IS FURTHER ORDERED that High Country Broadcasting Corporation SHALL FORFEIT to the UNITED STATES OF AMERICA the sum of five thousand dollars5,000.00 for its willful and repeated violation of the Communications Act of 1934, as amended, and the Commission's Rules. Payment of this forfeiture shall be made in the manner specified by the Commission in its *Memorandum Opinion and Order*, released March 22, 1988, in this proceeding, commencing on the first day of the first full month following thirty days after release of this Order.

11. IT IS FURTHER ORDERED that a copy of this Order shall be mailed by certified mail, return receipt requested, to:

Charles R. Crisler, President
High Country Broadcasting Corporation
Former Licensee, Radio Station KRIM(FM)
P.O. Box 415
Johnson, Arkansas 72741

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The statutory time constraints for petitions for reconsideration, which are intended to serve the ends of finality and repose, do not apply to applications for review. Limitations on filing applications for review are established solely by Commission Rule. (*See* Section 1.115(d) of the Commission's Rules.) Accordingly, the Commission may, in certain circumstances, consider an untimely application for review, such as where the equities so require and where the Commission's action does not adversely affect the interests of any party. In view of the facts here, for example, that no other parties would be prejudiced, and the timely-filed "Petition for Review" appears to incorporate arguments made in the Petition for Reconsideration, we will exercise our discretion to consider the Petition for Reconsideration as an application for review filed five days late and, on our own motion, waive the time limit contained in Section 1.115(d).

[2] In its response to the NAL, High Country presented the argument that any illegal transfers of control of the station were without the knowledge or consent of High Country, and that other, more culpable parties should be sanctioned. Then, in its Petition for Reconsideration, High Country claimed the transfer of control from High Country to Charles R. Crisler took place "after" Commission approval in August, 1985. A review of the facts indicate the Bureau has correctly determined that High Country participated in two transfers of control within the meaning of the Communications Act, as amended, prior to receiving Commission authorization. Furthermore, High Country's attempt at framing itself as a passive victim is unwarranted.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

UNITED TELECOMMUNICATIONS, INC.

Petition for Waiver
of Part 69 Regarding
Interim 900 Access Service

MEMORANDUM OPINION AND ORDER

Adopted: August 26, 1988; Released: August 31, 1988

By the Chief, Common Carrier Bureau:

1. On July 18, 1988, United Telecommunications, Inc. (United) filed a petition for waiver of Part 69 of the Commission's Rules, 47 C.F.R. Part 69, in order to establish a separate rate element for the recovery of costs incurred in the provision of the 900 Access Service (Petition).[1] The petition for waiver is unopposed.

2. United states that it has received numerous inquiries from interexchange carriers (ICs) concerning 900 Access Service. Petition at 1. It asserts that for the service to be provided, it must make certain network modifications in order that 900 calls can be routed to the appropriate 900 Service provider. *Id.* Part 69 of the Commission's Rules, 47 C.F.R. Part 69, does not contain a separate rate element for 900 Access Service that would allow United to recover these costs. Therefore, United requests a waiver of the rules to allow it to establish one. United maintains that grant of the waiver will serve the public interest by enabling it to meet customer requests for 900 Access Service at rates based on the cost of providing this service to ICs. *Id.* at 2.

3. The Bureau has granted a number of similar requests for waivers of Part 69 of the Commission's Rules.[2] In so doing, the Bureau determined that the public interest would be served by permitting an exchange carrier to employ a separate rate element to recover the costs of providing 900 Access Service.[3] We have determined that this same finding applies to the waiver sought by United, and we therefore grant United's request for a waiver.

4. ACCORDINGLY, IT IS ORDERED that the petition for waiver filed by United Telecommunications, Inc., IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Also on that date, United filed Transmittal No. 201 to introduce 900 Access Service. Transmittal 201, which is scheduled to become effective September 1, 1988, is unopposed.

[2] *E.g.*, Mountain States Telephone and Telegraph Company, Mimeo No. 4560, released May 16, 1986; Ameritech Operating Companies, 2 FCC Rcd 4217 (1987); New York Telephone Company, 3 FCC Rcd 2993 (1988); National Exchange Carrier Association, Inc., DA 88-1115, released July 27, 1988.

[3] *See, e.g.*, Mountain States Telephone and Telegraph Company, *supra* at paras. 10-11; National Exchange Carrier Association, Inc., *supra* at para. 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Midyear 1986 Access Tariff Filings
Petition for Waiver

UNITED TELECOMMUNICATIONS, INC.

MEMORANDUM OPINION AND ORDER

Adopted: December 21, 1988; Released: February 13, 1989

By the Chief, Common Carrier Bureau:

1. On October 18, 1988, United Telecommunications, Inc. (United) filed a petition for waiver of that portion of the Commission's Order, Midyear 1986 Access Tariff Filings, 1 FCC Rcd 1247 (1986) *(December 19 Order)* directing the local exchange carriers (LECs) to provide originating WATS access lines (WALs) with Feature Group A (FGA) and Feature Group B (FGB) service. We granted a number of carriers, including United, waivers of this requirement.[1] All such waivers expired on August 1, 1988.[2] The instant waiver request is similar to United's previous request, and is unopposed. [3] For the reasons set forth below, we grant United an additional one-year waiver.

2. In January 1987, a number of LECs filed petitions for clarification of the December 19 Order.[4] Ameritech, for example, argued that requiring the provision of originating WALs in connection with FGA and FGB was unnecessary because any interexchange carrier (IC) wishing to provide WATS service to customers served by nonconforming offices can use WATS access line extensions (WALEs) to connect those customers to offices with equal access capability. Moreover, Ameritech stated, it waives the charge for those extensions whenever WALEs would be required by an IC but not by AT&T. This Bureau denied the petitions for clarification but waived the obligation by the LECs to provide originating WATS access in connection with FGA and FGB until August 1, 1987.[5]

3. Soon thereafter, these same LECs, with the addition of Centel, filed requests for an indefinite continuation of these waivers based on the asserted high cost of compliance and the lack of IC demand for the service. United sought a three-year waiver. We declined to grant these requests, stating that grant of such waivers would be inconsistent with the service requirements established in the Commission's *December 19 Order*. Instead, this Bureau granted these LECs a waiver until August 1, 1988.[6]

4. United now seeks to have this waiver extended for one year. According to United, it would be forced to make costly modifications to its billing and network switching systems in order to provide originating WALs in connection with FGA. United Petition at 2-3. United asserts that since there continues to be no demand for the service, these expensive alterations are not warranted. *Id.* at 4. As an alternative, United offers to continue its practice of providing WALEs without charge to meet customers' requests for access. This arrangement, according to United, eliminates discrimination by providing all ICs with the ability to obtain WATS access line service under the same terms and conditions, regardless of whether their customers' end office has been converted to equal access. *Id.* at 3.

5. This waiver request is similar to those filed by the LECs in 1987 and in 1988. As there continues to be no demand for the service at issue and the costs of providing the service are not insignificant, we conclude that a one-year extension of United's waiver is warranted.

6. Accordingly, IT IS ORDERED that the petition for waiver filed by the United Telecommunications, Inc. GRANTED.

7. IT IS FURTHER ORDERED that the waiver granted by this Order expires on August 1, 1989.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] United Telecommunications, Inc., Petition for Waiver, 2 FCC Rcd 5873 (1987); Ameritech Operating Companies, Petitions for Indefinite Waiver, 2 FCC Rcd 4544 (1987) (*Ameritech Order I*) (waiver granted to the Ameritech Operating Companies (Ameritech), Pacific Bell, the BellSouth Telephone Companies (BellSouth), and GTE Telephone Operating Companies (GTOC)); Centel Telephone Companies, Petition for Waiver, 2 FCC Rcd 5257 (1987) (*Centel Order*) (waiver granted to Centel and the Bell Atlantic Telephone Companies).

[2] We granted Ameritech, BellSouth, and Pacific Bell one-year extensions of these waivers on July 28, 1988. Midyear 1986 Access Tariff Filings, Petitions for Waiver, 3 FCC Rcd 4838 (1988) (*Ameritech Order II*). We granted Centel a one-year extension on October 7, 1988. Centel Telephone Companies, Petition for Waiver, DA 88-1612, released Oct. 28, 1988.

[3] Although United's prior waiver expired on August 1, 1988, United did not file its waiver request until October 18, 1988. We note that its previous waiver request also was filed after the expiration date of the waiver. Should United desire a waiver of the Commission's Rules in the future, we expect that it will file its request in a timely manner.

[4] Ameritech, GTOC, BellSouth, Pacific Bell, and Bell Atlantic filed petitions for clarification.

[5] Midyear 1986 Access Tariff Filings, Ameritech Petition for Clarification of December 19 Order, Ameritech Services Tariff F.C.C. No. 2, 2 FCC Rcd 1112 (1987).

[6] *Ameritech Order I*, 2 FCC Rcd at 4545; *Centel Order*, 2 FCC Rcd at 5257; *United Order*, 2 FCC Rcd at 5873.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RKO GENERAL, INC. (WHBQ-TV) Memphis, Tennessee	**MM DOCKET NO. 84-1212** File No. BRCT-790402LC
and Associated Dockets	**MM DOCKET NOS. 84-1213 to 84-1214, 84-1218 to 84-1222, 84-1224**
RKO GENERAL, INC. (WFYR-TV) Chicago, Illinois	**MM DOCKET NO. 84-1085** File No. BRH-790801A3
and Associated Dockets	**MM DOCKET NOS. 84-1086, 84-1089, 84-1094, 84-1096**
RKO GENERAL, INC. (WAXY-FM) Ft. Lauderdale, Florida	**MM DOCKET NO. 84-1112** File No. BRH-781002WR
and Associated Dockets	**MM DOCKET NOS. 84-1113 to 84-1114, 84-1116, 84-1118**
RKO GENERAL, INC. (KRTH) Los Angeles, California	**MM DOCKET NO. 84-1184** File No. BR-22
and Associated Dockets	**MM DOCKET NOS. 84-1186 to 84-1188, 84-1190, 84-1195 to 84-1196, 84-1198 to 84-1199, 84-1201, 84-1203, 84-1207**
RKO GENERAL, INC. (WOR) New York, New York	**MM DOCKET NO. 84-1122** File No. BR-177
and Associated Dockets	**MM DOCKET NOS. 84-1123 to 84-1124, 84-1126, 84-1128, 84-1132 to 84-1135, 84-1138 to 84-1140, 84-1146**
RKO GENERAL, INC. (KFRC) San Francisco, California	**MM DOCKET NO. 84-1098** File No. BR-43
and Associated Dockets	**MM DOCKET NOS. 84-1099 to 84-1101, 84-1110 to 84-1111**

MEMORANDUM OPINION AND ORDER

Adopted: January 13, 1989; Released: February 14, 1989

By the Commission: Commissioner Dennis concurring and issuing a separate statement at a later date.

1. The Commission has before it: (1) a Petition for Special Relief Filed by Women Owning Radio, Inc., filed November 18, 1988; (2) a Response to Petition for Special Relief, filed November 30, 1988 by Gold Coast Broadcasting, Inc.; (3) Comments of RKO General, Inc. on Petition for Special Relief by Women Owning Radio, Inc., filed December 2, 1988; (4) Comments Regarding Petition for Special Relief, filed December 6, 1988 by Magna Media Corporation; and (5) a Reply of Women Owning Radio, Inc. filed December 20, 1988.

I. BACKGROUND

2. Women's petition seeks procedural relief relating to several pending proceedings that involve stations licensed to RKO General, Inc. In Phase I of the KHJ-TV proceeding (Docket No. 16679), the Commission is considering questions concerning RKO's basic qualifications to remain a Commission licensee. The findings in the Phase I proceeding were made binding on the parties to what were originally nine comparative renewal proceedings in which RKO's renewal applications for 13 co-owned stations were opposed by competing applicants for construction permits.

3. Because of the complexity of these interrelated proceedings, the Commission adopted special procedures to permit their expeditious and orderly resolution. The Commission provided that during the consideration of Phase I, the ALJs in the various comparative renewal proceedings should conduct hearings to determine the relative qualifications of the competing applicants and to issue partial initial decisions ranking these applicants. *RKO General, Inc. (WFYR - FM)*, 100 FCC 2d 464, 467-68 ¶ 8 (1985). The Commission believed that this would allow the competing applicants, in a "not unduly delayed" manner, the "opportunity to prove, in a comparative contest, that they are best qualified to serve the public interest." 100 FCC 2d at 467 ¶ 7 (quoting, *New South Media Corp. v. FCC*, 685 F.2d 708, 717 (D.C. Cir. 1982)). The Commission also provided that appeals of the partial initial decisions would be deferred until after the issuance of a decision determining RKO's qualifications in Phase I. 100 FCC 2d at 467-68 ¶ 8. *See also RKO General, Inc. (WHBQ - TV)*, 2 FCC Rcd 1626, 1628 ¶ 10 (1987).

4. The Commission has proceeded to carry out this procedure. On August 11, 1987, Administrative Law Judge Edward J. Kuhlmann issued a partial supplemental initial decision in Phase I concluding that RKO was unqualified to remain a Commission licensee. *RKO General, Inc.*, 2 FCC Rcd 4807 (I.D. 1987). The Commission heard oral argument on exceptions to the partial supplemental initial decision on April 28, 1988. At various times during 1986-88, the ALJs in the comparative renewal proceedings issued their partial initial decisions ranking the competing applicants (except in the Memphis AM radio proceeding where there was only one competing applicant). *RKO General, Inc. (WRKO)*, 60 RR 2d 1215 (I.D. 1986); *RKO General, Inc. (KFRC)*, FCC 86D-49 (Aug. 8, 1986); *RKO General, Inc. (WFYR - FM)*, 2 FCC Rcd 2839 (I.D. 1987);

RKO General, Inc. (WAXY - FM), 2 FCC Rcd 3348 (I.D. 1987); *RKO General, Inc. (WGMS)*, 2 FCC Rcd 3757 (I.D. 1987); *RKO General, Inc. (WHBQ - TV)*, 2 FCC Rcd 4111 (I.D. 1987); *RKO General, Inc. (KRTH)*, 3 FCC Rcd 2270 (I.D. 1988); *RKO General, Inc. (WOR)*, 3 FCC Rcd 4243 (I.D. 1988).

5. Meanwhile, RKO proposed to resolve these proceedings through settlement, and the Commission considered and approved settlements involving six of RKO's stations. (Three other settlements, involving four stations are now pending.) *RKO General, Inc. (KHJ - TV)*, 3 FCC Rcd 5057 (1988), appeal docketed sub nom. *Los Angeles Television, a Limited Partnership v. FCC*, No. 88-1673 (D.C. Cir. Sept. 16, 1988); *RKO General, Inc. (WHBQ)*, 3 FCC Rcd 5055 (1988); *RKO General, Inc. (WGMS)*, 3 FCC Rcd 5262 (1988); *RKO General, Inc. (WRKO)*, 3 FCC Rcd 6603 (1988). In each instance, we permitted the transfer of RKO's station to a third party -- a so-called "white knight." We concluded that, because of the strong public interest benefit from bringing service to the affected communities by an unquestionably qualified licensee and because the settlements would not undermine our policy of deterring licensee misconduct, the settlements would serve the public interest irrespective of the outcome of Phase I. As part of the settlements, RKO in each case received reimbursement in an amount significantly less than the 75 percent of fair market value permitted by our minority distress sale policy. Noting that our previous efforts to mediate a comprehensive settlement of the RKO proceedings had been unsuccessful, we concluded that only by approving settlements on an individual basis could we hope to realize the substantial public interest benefits that would flow from expeditious resolution of these extraordinarily complex and lengthy proceedings.

II. WOMEN'S PETITION

6. In its petition, Women urges the Commission to take further measures to facilitate the settlement process. Women states that it and other applicants in the WOR, New York proceeding have been engaged in settlement negotiations with RKO. Women complains that efforts to reach a settlement have been frustrated because some construction permit applicants have made unrealistic demands or refused to negotiate altogether. To expedite matters Women proposes that the Commission should: (1) defer its decision in Phase I; (2) order the immediate review of the partial initial decisions (by itself or by the Review Board) and issue a final decision subject to judicial appeal by the losing applicants; and (3) give the winning applicant and RKO a reasonable opportunity to negotiate a settlement.

7. RKO and the other commenters all oppose Women's suggestion that the Commission defer issuing a decision in Phase I. They all, however, support Women's proposal that the Commission expedite review of the partial initial decisions.

III. DISCUSSION

A. COMPARATIVE PROCEEDINGS

8. We see merit to Women's proposal that we expedite the review of the partial initial decisions in those proceedings where settlements have not been approved. The choice of whether or not to proceed with review of the partial initial decisions is a matter of determining which course of action best conduces to the orderly resolution of these proceedings. We see no prejudice to the parties in having their qualifications determined on the merits after a full opportunity for hearing. Those applicants whose applications are denied -- the decision being final as to them -- could then appeal.

9. Although it earlier appeared that deferring review of the partial initial decisions would result in a more appropriate procedure, it now appears that the reverse is true. Immediate review of the partial initial decisions may encourage settlements by reducing the number of applicants in each proceeding and by clarifying the applicants' likelihood of success. We have already concluded that the public interest favors properly structured settlements regardless of the outcome of Phase I. Moreover, review of the partial initial decisions would be necessary in any event if the proceedings do not settle, regardless of whether RKO is found qualified to remain a Commission licensee. In those situations where no settlement is reached, immediate review would impose no unnecessary burden on the parties or on the Commission.

10. In view of the foregoing, we direct the parties seeking review of the partial initial decisions to file their exceptions with the Review Board, which regularly considers matters of this nature, within 30 days after the release date of this memorandum opinion and order. Parties to proceedings in which a joint request for approval of a settlement agreement has been filed within this time period, including the parties to the WRKS-FM, WFYR-FM, KRTH, and KRTH-FM proceedings -- in which settlements are already pending -- need not file exceptions. (Of course, no further action is appropriate in those proceedings already terminated by settlements.) No extensions of time will be granted, absent extraordinary circumstances or evidence that all of the parties have agreed, at least, to a memorandum of understanding concerning a proposed settlement. After the Board has received exceptions and replies, it shall, with highest priority, proceed to review the ALJ's ranking of the applicants and issue decisions denying those applicants not ranking first. Thereafter, the Commission will review any Applications for Review of the Board's Decisions on the same basis.

B. PHASE I

11. Women has not demonstrated grounds to defer issuing a decision in Phase I. We remain committed to resolving Phase I expeditiously. To this end, we have heard oral argument and devoted substantial staff work toward the issuance of a decision as promptly as possible. Although we continue to believe that settlement offers the greatest opportunity for the speedy conclusion of these proceedings in the public interest, we will continue to pursue the public interest goal of an expeditious resolution of Phase I.

IV. ORDERS

12. ACCORDINGLY, IT IS ORDERED, That the Petition for Special Relief filed by Women Owning Radio, Inc., on November 18, 1988 IS GRANTED in part and IS DENIED in part, and the parties to the above-captioned RKO proceedings ARE DIRECTED to file exceptions in conformance with paragraph 10.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 97.313 of
the Commission's Rules Concerning
Identification Procedure for
Amateur Stations Operating Under a
Reciprocal Permit.

MEMORANDUM OPINION AND ORDER

Adopted: February 1, 1989; Released: February 14, 1989

By the Commission:

I. INTRODUCTION

1. On May 24, 1988, we released an *Order* [1] that rewrote Section 97.313 of our Rules entitled "Station identification" and, in particular, reversed the sequence in which the call sign is given in the station identification procedure for an amateur station operating under a reciprocal permit. *See* 47 C.F.R. § 97.313. Effective July 18, 1988, the United States letter-numeral designating the general location of the station is given first, followed by the call sign assigned to the alien's station by the licensing country. David B. Popkin (Popkin) has requested a partial reconsideration of the *Order*. Popkin contends that the rule, as rewritten, could have been drafted more precisely.

II. BACKGROUND

2. The revised identification procedure was based on an International Amateur Radio Union (IARU) resolution recommending that call sign identification for amateur stations operating under reciprocal permits be standardized with the letter-numeral designating the general station location transmitted before the call sign. The United Kingdom, France, the Federal Republic of Germany and Switzerland have already implemented the IARU recommended standard.

III. PETITION FOR RECONSIDERATION

3. To avoid confusion, Popkin recommends several minor changes in the wording of the station identification requirements. For example, Popkin requests that the phrase "preceded by the appropriate letter-numeral designating the station location" be expanded to read: "preceded by the appropriate *United States* letter-numeral *amateur call sign prefix* designating the station location." In addition, Popkin requests that the word "slant" be added as another option to the words "stroke" or "slash" to describe the slant mark "/" during telephony transmissions. The petitioner also requests that the rule specifically state that the identification shall be made in the English language.

IV. DECISION

4. We agree with Popkin that minor rewording of the alien station identification rule is warranted and have modified that rule along the lines suggested by the petitioner. Rather than limiting the verbalization of the slant mark "/" to "stroke" or "slash", and adding the word "slant" as suggested by Popkin, however, we will permit the use of any suitable word that denotes that punctuation symbol[2] during telephony transmissions. As for identifying in English, there is already a requirement in Section 97.84(g)(2) of the Commission's Rules, 47 C.F.R. § 97.84(g)(2), for the use of the English language when the station identification is made by telephony. We see no reason to repeat the requirement in Section 97.313. To make sure there is no misunderstanding, however, we have included a reference to the basic station identification requirement of Section 97.84.

V. PROCEDURAL MATTERS

5. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements and will not increase or decrease burden hours on the public.

VI. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, pursuant to the authority contained in 47 U.S.C. §§ 154(i) and 303(r), that Part 97 is amended as set forth in the Appendix below, effective **April 17, 1989.**

7. IT IS FURTHER ORDERED that the petition for reconsideration IS GRANTED to the extent indicated herein and otherwise IS DENIED.

8. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. §§ 151-155, 301-609, unless otherwise noted.

2. Section 97.313 is revised to read as follows:

§ 97.313 Station identification.

When the station is operating under a reciprocal permit, the call sign transmitted in the identification procedure required by § 97.84 must be that issued to the station by the licensing country, preceded by the appropriate United States letter-numeral amateur station call sign prefix designating the regional location of the station, separated by "/" (the slant mark) on other than telephony emission transmissions and by any suitable word that denotes the slant mark during telephony emission transmissions. At least once during each intercommunication, the identification announcement must include the geographical location as nearly as possible by city and state, commonwealth or possession.

FOOTNOTES

[1] Order, 3 FCC Rcd 2988 (1988).

[2] That punctuation symbol is more formally called the virgule or diagonal.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-559

In re Applications of

CORYDON BROADCASTERS LIMITED — File No. BPH-860221MN

HARRISON COUNTY BROADCASTING CO. — File No. BPH-860221MT

For Construction Permit
for a New FM Station on Channel 299B
in Corydon, Indiana

Appearances

Timothy K. Brady, on behalf of Corydon Broadcasters, Ltd.; *Robert S. Stone*, on behalf of Harrison County Broadcasting Company; and *Robert Zauner*, on behalf of the Mass Media Bureau.

INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE
JOHN M. FRYSIAK

Issued: January 31, 1989; Released: February 14, 1989

PRELIMINARY STATEMENT

1. By *Hearing Designation Order*, DA 87-1800, released December 29, 1987 (HDO), the above-referenced applications of Corydon Broadcasters, Limited (Corydon), and Harrison County Broadcasting Co. (Harrison) were designated for hearing on the following issues:[1]

> To determine which of the proposals would, on a comparative basis, best serve the public interest.
>
> To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

2. On January 6, 1988, dismissed applicant Pruitt and Owen filed a Request to Certify Application for Review to the Full Commission. By *Order*, (88M-307) released February 5, 1988, this Request to Certify was dismissed by the Presiding Judge.

3. On January 6, 1988, dismissed applicant Pruitt and Owen filed an Application for Review with the Full Commission with respect to the dismissal of its application. That Application for Review is currently pending. On January 29, 1988, dismissed applicant Lopez Radio, Inc. filed a Petition for Reconsideration with the Mass Media Bureau with respect to the dismissal of its application and the denial of its Petition for Reconsideration, which Petition for Reconsideration is currently pending.

4. On February 2, 1988, dismissed applicant Pruitt and Owen filed a Petition to Intervene in the above-referenced proceeding and on February 3, 1988, dismissed applicant Lopez Radio, Inc. likewise filed a Petition to Intervene. By *Memorandum Opinion and Order* (88M-538), released February 26, 1988, the Presiding Judge denied both Petitions to Intervene. This decision was appealed to the Review Board by Lopez Radio, Inc., which appeal was denied by the Board in a *Memorandum Opinion and Order* (88R-28), released June 6, 1988.

5. A prehearing conference was held on March 3, 1988, and an evidentiary hearing was held in Washington, D.C., on September 12, 1988. The record was closed on September 12, 1988 (Tr. 90).

FINDINGS OF FACT

Corydon Broadcasters Limited

6. Corydon is a limited partnership, organized under the laws of the State of Florida, pursuant to the terms of a written Agreement and Certificate of Limited Partnership, executed February 20, 1986, and filed with the office of the Secretary of State of Florida on February 24, 1986. The Partnership consists of one General Partner, Irvin S. White, and two Limited Partners, David T. Murray and Charles M. Anderson, who share profits and losses of the Partnership on an equal, 33.33 percent basis (Corydon Ex. 1).

7. Neither Corydon, as a legal entity, nor any of its partners has any ownership interest, in any broadcast facility or any other outlet of mass communications, nor do any members of the immediate families of its partners hold any such interests (Corydon Ex. 1).

8. Corydon will install and utilize auxiliary power generating equipment at both its studio and transmitter sites for the purpose of providing continuous service to the community and service area in the event of power outage or other emergency situation requiring an auxiliary power source (Corydon Ex. 1).

9. Irvin S. White, General Partner of Corydon Broadcasters, Limited, is proposed to be integrated into the management and operation of the proposed station on a full-time basis (minimum of 40 hours per week) in the role of General Manager. In his role as General Manager, Mr. White is to assume responsibility for supervision of all phases of station operation, including overall supervision of the performance of all station employees in their assigned duties. All management level employees will report directly to him. His duties will also include, but not be limited to, overseeing the continuing ascertainment of community needs and interests and formulating responsive programming to meet those needs and interests; formulating station policy; and assuring station compliance with the Commission's Rules and Regulations (Corydon Ex. 2).

10. Mr. White's proposal is to devote a minimum of 40 hours per week on a daily basis to the proposed station without qualification. Mr. White is currently employed, but plans to terminate his employment so as to be able to effectuate his integration proposal (Corydon Ex. 2). Mr. White's employment at WJKS-TV, Jacksonville, Florida, is

governed by a written employment agreement (Harrison Ex. 4) which includes and incorporates by reference an eight-page document entitled "WJKS Jacksonville Television, Inc. Talent Contract Clauses" (Harrison Ex. 5). The term of his employment agreement is three years, from December 16, 1987 through December 15, 1990 (*Id.*). The agreement stipulates that WJKS must release Mr. White from his employment contract in the event he receives a bona fide employment offer from a television station in one of the top ten television markets within the United States (*Id.*). On the other hand, the employment agreement is silent regarding Mr. White's election to move from Jacksonville, Florida to Corydon, Indiana in order to manage a radio station. The employment arrangement does expressly state, however, that all of Mr. White's services in both radio and television are exclusive to WJKS during this term of his employment agreement (Harrison Ex. 5). While his employment agreement with WJKS was signed by WJKS's general manager, only the station's news director is aware of Mr. White's FM project in Indiana as far as Mr. White knows (Tr. 17, 27, 28). Moreover, while the station's news director is generally aware of Mr. White's involvement in Corydon's Corydon FM project, the news director is unaware of any details as to Mr. White's participation in the operation of Corydon's proposed station (Tr. 17).

11. Mr. White, who is Black, currently resides at 11418 White Bay Lane, Jacksonville, Florida. In the event Corydon's application is granted he will move to Corydon, Indiana, and establish his permanent residence in that community (Corydon Ex. 2).

12. Mr. White was born and raised in Hopkinsville, Kentucky, where he graduated from Hopkinsville High School in 1976. He attended Western Kentucky University at Bowling Green, Kentucky, from 1976 to 1980, majoring in Broadcast Communications and minoring in Speech. Mr. White has been involved in broadcasting since 1974. He began his broadcasting career, while in high school, at WHOP-AM/FM, Hopkinsville, Kentucky, where he worked part time between June 1974 and August 1976, as commercial switcher for St. Louis Cardinals baseball broadcasts. While in college, Mr. White worked at the educational television facility operated by Western Kentucky University between September, 1977, and December, 1978. Mr. White was employed as a Student Production Assistant (Corydon Ex. 2), which was a paid position (Tr. 29). From January, 1979 to October, 1979, he was employed at WBKO-TV, Bowling Green, Kentucky as a studio camera operator and master control. From October, 1979, to August, 1984, was employed at WBKO-TV as Sports Reporter and Weekend Anchor. From August, 1984, to December, 1985, he was employed at WBKO-TV as Sports Director and Weekday Sports Anchor. In December, 1985, he moved to Jacksonville, Florida, where he became employed at WJKS-TV, Jacksonville. From December, 1985, to December 1987, he was employed as Sports Reporter and Weekend Anchor. From December, 1987, to the present he has been employed at WJKS-TV as Weekday Sports Anchor. Mr. White is a member of the Florida Sportscasters Association and the National Association of Black Journalists (Corydon Ex. 2).

Harrison County Broadcasting Company

13. Harrison, a corporation organized for profit under the laws of the state of Tennessee, is authorized to issue 1,000 shares of common voting stock with no par value (Harrison Ex. 1). Deborah M. Poindexter owns and votes 100 percent of the issued and outstanding shares of Harrison, and serves as its president and only director (Harrison Ex. 2). There are no other ownership interests in Harrison, whether voting or non-voting (*Id.*).

14. Neither Harrison nor Deborah M. Poindexter, its president, director, and 100 percent shareholder has any interest in, or connection with, or application for any commercial or non-commercial radio or television broadcast station, cable television system, newspaper, magazine, or any other medium of mass communications (Harrison Exs. 1 and 2).

15. Harrison County Broadcasting Company proposes to acquire, install, and utilize, when necessary, auxiliary power generating equipment at both its transmitter site and studio location so as to assure continued service to its listeners in the event of a localized or generalized power failure (Harrison Ex. 3).

16. Ms. Poindexter proposes to serve as the full time general manager of Harrison County Broadcasting Company's proposed station, devoting a minimum of 40 hours per week to the above position. As president, sole director, sole shareholder, and general manager, Ms. Poindexter will be the chief executive officer of the operations of the station and will have ultimate supervisory responsibility over all station operations, including the establishment and implementation of station policies, supervision and coordination of all department heads, financial management, program selection, employment policies, and general supervision of all station operations (Harrison Ex. 2).

17. In the event of a grant, Ms. Poindexter will relocate her residence to the community of Corydon where she will permanently reside on a full-time basis. She shall also withdraw fully from all current employment, business pursuits, or other activities requiring her time or attention so as to fulfill her integration commitment. Ms. Poindexter is a Black American female and a United States citizen (*Id.*).

18. Ms. Poindexter learned of the availability of Corydon, Indiana FM channel 299B from her communications counsel, Rudolph L. Ennis, when meeting with Mr. Ennis in order to learn what stations might be available for acquisition (Tr. 49). She retained her engineering consultant, Kenneth H. Larkin, Jr., based upon Mr. Ennis's recommendation (Tr. 52). Ms. Poindexter personally met with her proposed lender, the Citizens Bank, for the purpose of establishing her financial qualifications (Tr. 56). She has used her personal funds throughout this proceeding, both before and after opening her corporate checking account (Tr. 77-78). She was also the exclusive incorporator of Harrison (Tr. 73).

CONCLUSIONS OF LAW

Diversification

19. Neither Corydon nor any of its partners have any attributable interest in other outlets of mass media communications.

Integration

20. Corydon claims a 100 percent integration credit for Mr. White's proposed involvement, but it appears that Mr. White will not be able to effectuate his proposal before the term of his employment contract with WJKS-TV expires, December 16, 1990. The employment contract does not provide for Mr. White's release in the event he takes on a job of general manager of a radio station. The employment contract specifically provides that a waiver to any term or condition, to be effective, must be in writing. Thus, Mr. White's oral understanding with WJKS's News Director that he would be released from the terms of its contract upon grant of a radio license herein is not effective. Since Mr. White is contractually bound to full-time employment at WJKS, Jacksonville, Florida, until December 16, 1990, his full-time integration commitment to Corydon is flawed. Corydon has failed to demonstrate how Mr. White could accommodate his outside professional and business activities so as to fulfill his specific commitment to the proposed station. *See, Washoe Shoshone Broadcasting*, 3 FCC 3948 (Rev. Bd. 1988). Consequently, no credit can be given for Corydon's integration proposal. Had Mr. White been able to effectuate his integration proposal his proposal would have been enhanced by his proposed local residence, his minority status and his past broadcast experience. Corydon's proposal is also enhanced by its proposed auxiliary power.

21. Harrison argues that Corydon's integration proposal is not creditable for still another reason, *i.e.*, because of the impermissible involvement of its limited partners in management affairs. However, the record shows that all activity except one was pre-organizational and under the circumstances not indicative of the likelihood of the limited partners future involvement. *See, Victory Media, Inc.*, 3 FCC Rcd 2073 (1988). While it is undisputed that one of Corydon's limited partners (Anderson) did prepare the technical portions of an amendment after formation of Corydon, steps have been taken to assure that he does not have any further involvement. The general partner had retained a different technical consultant who prepared a technical showing in April, 1988 and will handle Corydon's technical work in the future. The preparation of the technical exhibit by Anderson in April of 1986 had no impact on policy or any substantive aspect of management and control of Corydon. Anderson's preparation of an engineering exhibit in April of 1986 is deemed not to have been managerial and in light of subsequent remedial action taken is deemed to be inconsequential and unlikely to occur again. It is also to be noted that Corydon's Limited Partnership Agreement includes all of the required insulating provisions in accordance with the Commission's *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984); mod. 58 RR 2d 605 (1985). It is ruled that, in light of all the foregoing, Corydon's limited partnership is *bona fide*, all of Corydon's limited partners being genuinely passive investors.

Harrison County Broadcasting Co.

Diversification

22. Neither Harrison nor Deborah M. Poindexter, its sole shareholder, officer and director, holds any media interests.

Integration

23. Harrison is entitled to a 100 percent quantitative integration credit which is enhanced by her proposed local residence, and her minority and female status. Harrison's proposal is also enhanced by its proposed auxiliary power.

24. Corydon argues that Harrison's proposal is not reliable because of numerous incongruities in the testimony of Ms. Poindexter and her prior activities relating to Harrison's application. But for all that Corydon notes, it only amounts to nitpicking. The record clearly shows that at all times Ms. Poindexter was the sole principal involved in the Harrison application and that all expenses have been paid from her personal funds. There is no question that she was in complete control of the application at all times. The points Corydon raises, to wit, that consultants did some of the pre-filing work, that the bank commitment letter was addressed to Ms. Poindexter rather than to the corporation, that Ms. Poindexter is yet to visit the community of license are all *de minimis*. There is nothing wrong in having consultants do some of the work in behalf of an applicant and there is no Commission requirement that an applicant visit before grant the community of license. The issue is whether the applicant is in complete control. Corydon has not demonstrated that Ms. Poindexter is incapable of effectuating the Harrison proposal (*i.e.*, being involved in day-to-day management on a full-time basis).

ULTIMATE CONCLUSION

25. Harrison is clearly the winner. Corydon is not entitled to any integration credit. Even if it were entitled to a 100 percent integration credit, it would lose on a comparative basis.[2] The difference between the two would lie in Ms. Poindexter's female status credit versus Mr. White's broadcast experience credit (all other enhancement factors being equal). Commission precedent holds that female status credit outweighs broadcast experience credit. The public interest, therefore, would be better served by a grant of the Harrison application.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the decision on its own motion in accordance with Section 1.276 of the Rules, the application of Harrison County Broadcasting Co. (File No. BPH-860221MT) IS GRANTED, and the application of Corydon Broadcasters Limited (File No. BPH-860221MN) IS DENIED.[3]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

FOOTNOTES

[1] The applications of Pruitt and Owen (File No. BPH-860218MQ), Lopez Radio, Inc. (File No. BPH-860221MO), Corydon Broadcasting Limited Partnership (File No. BPH-860221MP), Corydon Communications Limited Partnership (File No. BPH-860221MQ), and Minority Communications (File No. BPH-860221MV), were each returned due to short spacing to the

buffer zone protection accorded to WYHY-FM, Lebanon, Tennessee, operating on first adjacent channel 298C. Each of these applicants filed timely petitions for reconsideration following the returns of their resective applications which petitions were denied in the context of the HDO.

[2] Corydon and Harrison have each proposed 100 percent integration. If each proposal were creditable, each applicant would be credited with an integration score of 10.000 under the Hirschman-Herfindahl Index. (*Omaha TV 15, Inc.*, FCC 88-371, released December 19, 1988.)

[3] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 13, 1989

PLEADING ESTABLISHED FOR COMMENTS ON BELL ATLANTIC'S CEI PLAN FOR ELECTRONIC DATA INTERCHANGE SERVICES

On January 30, 1989, the Bell Atlantic Telephone Companies (Bell Atlantic) filed a comparably efficient interconnection (CEI) plan to provide electronic data interchange (EDI) services on an unseparated basis. According to Bell Atlantic, EDI will allow users to exchange formatted business information electronically. EDI will also provide additional features such as validation of data fields, message status reporting and department transaction routing. Bell Atlantic states that EDI can perform transactions among documents that use different standard formats to enable users in different industries to exchange electronic documents.

As required in the Computer III proceeding (Phase I Order, 104 FCC 2d 958 (1986), modified on reconsideration, 2 FCC Rcd 3035 (1987), further reconsideration, 3 FCC Rcd 1135 (1988)), the Commission must approve the CEI plan before Bell Atlantic can begin implementing the proposed service.

According to Bell Atlantic, it will account for the joint and common costs of the EDI services pursuant to its Part 32 cost allocation manual that the Commission has conditionally approved (Bell Atlantic Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 109 (1988)). Bell Atlantic also describes its plans for complying with the other Computer III nonstructural safeguards governing the use of customer proprietary network information, nondiscrimination reporting and nondiscriminatory provisioning, and disclosure of network information.

Interested parties should file comments on Bell Atlantic's plan by **March 6, 1989,** and reply comments by **March 20, 1989,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of Bell Atlantic's plan can be obtained from ITS at (202) 857-3800.

For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 13, 1989

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON AT & T'S COMPARABLY EFFICIENT INTERCONNECTION PLAN FOR FTS2000 ENHANCED SERVICES

On January 24, 1989, the American Telephone and Telegraph Company (AT&T) filed a comparably efficient interconnection (CEI) plan to offer the federal government two collocated enhanced services as part of the FTS2000 integrated terrestrial and satellite network: agency recorded message announcements (ARMA) and protocol conversion. According to AT&T, ARMA will allow users on the FTS2000 network to record, store and play back messages or announcements in that network. The protocol conversion service will allow users to access the FTS2000 packet switched service. AT&T notes that it is under contract with the Government Services Agency (GSA) to provide FTS2000.

As required in the Computer III proceeding (*Phase I Order*, 104 FCC 2d 958 *(1986), modified on reconsideration*, 2 FCC Rcd 3035 (1987), *further reconsideration*, 3 FCC Rcd 1135 (1988)), the Commission must approve the CEI plan before AT&T begin implementing the proposed services.

According to AT&T, it will account for the joint and common costs of the services pursuant to its Part 32 cost allocation manual that the Commission has approved. AT&T also describes its plans for complying with the other Computer III nonstructural safeguards governing the use of customer proprietary network information, nondiscrimination reporting and nondiscriminatory provisioning, and disclosure of network information.

Interested parties should file comments on this plan by **March 3, 1989**, and reply comments by **March 17, 1989**, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of AT&T's plan can be obtained from ITS at (202) 857-3800.

For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

QUALCOMM, INC. File Nos. 869-DSE-P/L-88
3073-DSE-ML-88

Application for Blanket Authority
to Construct and Operate a Network
of 12/14 GHz Transmit/Receive
Mobile and Transportable Earth
Stations and a Hub Earth Station

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: January 27, 1989; Released: February 14, 1989

By the Commission:

I. INTRODUCTION

1. Qualcomm, Inc. (Qualcomm) requests authority to construct and operate up to 20,600 very small aperture 12/14 GHz mobile and transportable transmit/receive earth stations and to operate a fixed 12/14 GHz transmit/receive earth station that will serve as the hub station for the network.[1] The proposed network is intended to provide two-way satellite-based data communications between a customer's operations center and its mobile users by using capacity on 12/14 GHz domestic fixed-satellites. Qualcomm has also filed a Request for Clarification Regarding Permissible Uses of the Fixed-Satellite Service Frequencies.

2. Qualcomm's application was placed on public notice on January 6, 1988. Contel ASC and Aeronautical Radio, Inc. (ARINC) filed comments, and Qualcomm filed replies. In addition, the Mobile Satellite Service Applicants (MSS Applicants) filed reply comments, and Qualcomm filed a motion for leave to file, and a response to these comments.[2] On June 13, 1988, the National Academy of Sciences - National Research Council's Committee on Radio Frequencies (CORF) filed informal comments, [3] and Qualcomm filed a response.[4] For the reasons set forth below, we grant the application subject to certain conditions.

3. Qualcomm's proposed network is designed to use existing 12/14 GHz space segment capacity to provide mobile-satellite communications services to users. The proposed Earth-to-space transmission link is in the 14.0-14.5 GHz frequency band, which is allocated both domestically and internationally to the land mobile satellite service on a secondary basis. The proposed space-to-Earth transmission link is in the 11.7-12.2 GHz frequency band, which contains no allocation for a mobile satellite service. Both bands are allocated to the fixed-satellite service on a primary basis and a portion of the 14.0-14.5 GHz band is allocated to the radionavigation service on a primary basis.[5] In addition, a variety of other services are authorized to use these bands on a secondary basis.[6] Qualcomm asserts that its operations will not cause any unacceptable interference to fixed-satellite service users.

4. Qualcomm's proposed network initially will use two transponders on GTE Spacenet Corporation's (GTE Spacenet's) GSTAR 1 satellite -- one for the link from the hub station to the satellite to the user terminal (forward link) and one for the link from the user terminal to the satellite to the hub station (return link). Outbound messages from customers' operations centers will be carried via leased or dial-up telephone lines or satellite circuits to Qualcomm's Network Management Center, which will be co-located with the hub station. These messages will be transmitted by the hub station to the satellite. The satellite will then retransmit these messages to individual mobile or transportable user terminals.[7] Each message packet will have a unique address so that it will be intelligible only to the terminals authorized to receive the message. The user terminals will, in turn, transmit messages to the satellite whenever direct line-of-sight to the satellite is possible. Finally, these messages will be retransmitted by the satellite to the hub station for distribution to customers' operations centers.[8]

5. Because Qualcomm's proposed network involves large numbers of technically identical very small antenna earth stations operating in the 12/14 GHz bands, Qualcomm requests that we grant it a blanket authorization for these stations pursuant to our *VSAT Order*.[9] It further states that, in conformance with the *VSAT Order*, it will establish a point of contact where records of location and frequency use of each of the stations would be maintained. However, Qualcomm argues that while it will maintain location records of those stations being used in a transportable mode, it would be unnecessarily burdensome for it to maintain accurate records of location for each of the stations being used in a mobile mode. Qualcomm instead proposes to maintain records of the vehicles on which these stations have been installed and requests a waiver of the *VSAT Order*'s requirement to maintain accurate records of location for these stations.

6. Qualcomm asserts that because its system will use capacity on operational satellites, it will be able to bring the benefits of two-way satellite based mobile communications services, including ancillary position location information,[10] to the public immediately. It states that this service is attractive to those customers having a need for specialized two-way data communications services, such as long haul trucking companies, industries that provide services in the field, public safety organizations, and transportable earth station users with low data rate requirements or who face antenna size restrictions.

7. No oppositions to the proposal were filed by fixed-satellite operators or other primary users of the spectrum.[11] Numerous letters in support of the proposal were filed by a wide range of potential users.[12] In addition, ARINC supports the concept of permitting fixed-satellite providers to offer mobile-satellite services, although it takes no position on Qualcomm's proposal.[13] The MSS Applicants are opposed to Qualcomm's Application. The MSS Applicants state that they seek to use the 12/14 GHz band for feeder links for their MSS system because one of the proposed orbital locations for an MSS satellite is adjacent to GSTAR 1. Finally, CORF raises concerns

about interference into the radio astronomy service, which operates on a secondary basis in the 14.47-14.50 GHz band.

II. DISCUSSION

A. Frequency Allocation Matters

8. Initially, we must determine whether Qualcomm's proposed mobile satellite communications service may be permitted in the 14.0-14.5 GHz and 11.7-12.2 GHz frequency bands.[14] Because the Table of Frequency Allocations differs for the two proposed bands, the Earth-to-space link and the space-to-Earth link will be discussed separately.

1. Earth - to - Space Link

9. The mobile units in Qualcomm's proposed network will transmit in the 14.0-14.5 GHz frequency band. Pursuant to Footnote US 287 to the U.S. Table of Frequency Allocations and Footnote 859 of the International Table of Frequency Allocations, this band is allocated to the land mobile-satellite service (Earth-to-space) on a secondary basis. Stations of a secondary service may operate in the designated frequency band provided that they cause no harmful interference to stations of a primary service.[15] In addition, secondary stations cannot claim protection from harmful interference from stations of a primary service.[16] Thus, the 14.0-14.5 GHz band may be used to provide land mobile satellite services provided that these operations do not cause harmful interference into the fixed-satellite service, the radionavigation service, or any other service operating on a primary basis in that band.[17] The land mobile satellite service, as a secondary service, also must accept any interference from any of the primary services.

2. Space - to - Earth Link

10. The proposed downlink from the satellite to Qualcomm's mobile units is in the 11.7-12.2 GHz frequency band. This band contains no allocation, either domestically or internationally, for a mobile satellite service. Qualcomm argues that operation of its mobile units is nevertheless a permissible use of these frequencies and is consistent with Commission policy. Qualcomm contends that a companion secondary downlink allocation to the uplink allocation at 14.0-14.5 GHz was not adopted because one was not necessary.[18] According to Qualcomm, the satellite itself cannot distinguish between moving and stationary receiving terminals. As long as mobile operations conform to the technical standards for the fixed-satellite service, fixed-satellite service users could suffer no unacceptable interference. In fact, Qualcomm states, a fixed-satellite operator could not know of or prevent reception by mobile terminals. Thus, it concludes that an explicit allocation for the downlink was not needed. Qualcomm further states that in light of the Commission's policy towards permitting non-conforming uses of the allocation plan in appropriate situations and increasing the flexibility of its allocation plan,[19] it should not limit the uses of the 11.7-12.2 GHz band, especially since the primary characteristics of Qualcomm's system are consistent with fixed-satellite service policies and rules.[20] Qualcomm concludes that the public interest would be served by permitting the fixed-satellite service downlink to be used for mobile satellite service on a non-interference basis.[21]

11. In general, use of the radiocommunication frequencies in the United States must be in accordance with the Table of Frequency Allocations contained in Section 2.106 of the Commission's rules.[22] However, non-conforming uses may be allowed in particular situations.[23] We have, for example, stated that fixed rural telephone service is one of the satellite services that may be provided in the frequencies recently allocated to the mobile satellite service.[24] We conclude that the public interest would be served by permitting service to land mobile terminals in the 11.7-12.2 GHz downlink. However, because the Table contains no allocation for mobile satellite service, this service may only be provided on a non-interference basis to all other services, both primary and secondary, allocated to use that band.[25]

12. In implementing the Final Acts of the 1979 WARC in 1983, the Commission added footnote US 287, which allocated the 14.0-14.5 GHz frequency band to the land mobile satellite service for Earth-to-space transmissions on a secondary basis.[26] Although no companion downlink allocation was made specifically, we believe that allowing these mobile services in the downlink band would be consistent with the purpose of the secondary uplink allocation.[27] Without a space-to-Earth link to accompany the Earth-to-space link, two-way land mobile-satellite communications service will not be possible. We see no reason to prevent a two-way service, with its concomitant benefits, when a downlink transmission from a fixed-satellite appears identical regardless of whether it is being received by fixed or mobile terminals. In light of the secondary uplink allocation for land mobile satellite service and the transparent nature of the downlink transmission, we will permit space-to-Earth transmissions to land mobile terminals in the 11.7-12.2 GHz frequency band provided these operations will not cause unacceptable interference into any primary or secondary services authorized to use that band. The land mobile satellite service operator will also have to accept any interference from any of these services.

3. Conclusion

13. We conclude that land mobile satellite services are permissible in both the uplink and downlink frequency bands proposed by Qualcomm. It is not clear from Qualcomm's application whether Qualcomm intends to provide aeronautical or maritime mobile satellite services in addition to land mobile satellite service. However, because the secondary uplink allocation is for land mobile satellite service only, we limit any mobile operations in these bands to that service.

B. Technical Matters

14. Having determined that land mobile satellite services may be provided in the 11.7-12.2 GHz and the 14.0-14.5 GHz bands, we must next determine whether Qualcomm's proposed operations are likely to cause harmful interference to primary services or to secondary services that have superior status, both domestically and internationally. While Qualcomm would be required to cease transmissions immediately if its system interfered with any of these services, we seek to avoid disruptions to these services and will permit Qualcomm to operate only if there is little potential for interference. We conclude

that the potential for harmful interference from Qualcomm's system is minimal if Qualcomm abides by certain conditions we place on its operations.

15. In analyzing potential interference, the forward and return links must be considered separately. The forward link signal from the hub to the satellite to Qualcomm's mobile units will be transmitted in one of two modes. Mode A is a frequency-hopped spread spectrum technique over the whole transponder and Mode B is a triangle wave power dispersal technique over 2 MHz of the transponder.[28] While Qualcomm's initial user terminals will operate in Mode A, the remainder of the units will be equipped with Mode B. Qualcomm states that it expects it will switch service over to Mode B exclusively in the near future.[29] The transmit power densities of the hub station for Modes A and B are +16.2 dBW/4 KHz and +17.0 dBW/4 KHz, respectively.[30] Qualcomm asserts that the interference potential of both signals is less than or equal to the interference caused by a full transponder video signal.[31] According to Qualcomm, the return link signal from the mobile unit to the satellite will have a maximum power level of +20 dBW EIRP and an antenna pattern with an approximately 6° beamwidth along the orbital arc. Qualcomm states that potential interference from the mobile terminals will be mitigated by several techniques.[32]

16. The only significant potential for interference from Qualcomm's system appears to be into the fixed-satellite service.[33] No operators in the fixed-satellite service, however, object to Qualcomm's proposal.[34] Nevertheless, we believe that some conditions on Qualcomm's operations are necessary to ensure that no interference is caused to fixed-satellite operations. With respect to the forward link, potential interference appears likely only into VSAT, single channel per carrier (SCPC), or low capacity carrier services, which use significantly lower power. We do not believe this is an insurmountable problem. First, the affected fixed-satellite may not be providing VSAT or SCPC service on the same frequencies on which Qualcomm's GSTAR 1 transponders operate. Moreover, even if a fixed-satellite does provide these services, interference may be avoided. Qualcomm acknowledges that Mode A operations may cause harmful interference into VSAT or SCPC operations and we agree that interference is likely. Thus, we will not permit Qualcomm to operate in Mode A in the forward link.[35] In contrast, Mode B operations in the forward link should be able to be coordinated in the same manner as a typical video carrier with energy dispersal only. A typical standard video carrier operating over a full or half transponder may be a source of interference to adjacent satellites providing VSAT, SCPC or low capacity carrier services. SCPC and video transmissions are therefore typically coordinated with the video carrier using energy dispersal over only the center 2 MHz of a particular transponder and the SCPC or low capacity carriers using frequencies sufficiently removed from the center. Thus, we will permit Qualcomm to operate in Mode B at its proposed power densities upon the agreement of all affected satellite operators. If Qualcomm cannot obtain operational agreement from affected satellite operators, we will require it to restrict Mode B transmissions to the center 2 MHz of the transponder or the frequencies normally assigned to video carriers and to a maximum satellite carrier EIRP density of not more than +6.0 dBW/4 KHz within the service area.[36]

17. With respect to the return link, potential interference to fixed-satellite operations can be avoided if certain restrictions are placed on the number of mobile terminals that can operate simultaneously.[37] However, rather than placing a strict numerical limit on mobile terminal operations, we will permit Qualcomm to operate any number of mobile units simultaneously provided that the deterministic aggregate adjacent satellite interference potential does not exceed, at any time, that which would be caused by a single earth station operating with a power into the antenna of -14 dBW/4 KHz[38] and an antenna that complies with the sidelobe requirements of Section 25.209 (a) of the Commission's rules for all angles along the visible portion of the geostationary-satellite orbit.[39] Finally, to ensure that the aggregate adjacent satellite interference is controlled, we condition Qualcomm's operations to require that individual mobile units may transmit only on command from the hub terminal via the forward link and to require that the mobile antenna pattern is properly aligned with the geostationary-satellite orbit so that the mobile antenna's 3-dB beamwidth along the orbital arc is not more than 7 degrees for any orientation of the mobile unit.

C. Regulatory Status

18. Having determined that Qualcomm can be authorized to provide its proposed services, we must decide how it should be regulated. We find no reason at this time to require Qualcomm to act as a common carrier. Further, Qualcomm asserts that it will be acting as a private carrier by contracting with individual customers, configuring its network to meet individual customer's needs, and pricing services and equipment in accordance with each customer's network requirements.[40] On the basis of the representations before us, we find that Qualcomm will not be providing common carrier services and we will not subject it to common carrier regulation.[41]

D. Licensing Matters

19. Qualcomm's proposed system will consist of large numbers of technically identical small antennas operating in the 12/14 GHz band. Qualcomm requests that we issue a blanket license in accordance with the *VSAT Order*.[42] It states that it will maintain accurate records of the technical parameters of the earth stations, will maintain location records of the transportable stations, and will maintain records of the vehicles on which the mobile stations have been installed.

20. When large numbers of technically identical small antennas are to operate in frequency bands where prior coordination of each station with other stations operating in that band is not required, we have issued blanket licenses to cover those stations.[43] We explained that requiring individual licenses for potentially thousands of antennas would be costly and burdensome to both the licensee and the Commission. Here, Qualcomm seeks to construct and operate up to 20,600 mobile terminals that will operate on a non-interference basis and that, with the operating conditions described above, are not likely to cause harmful interference into other services operating in those bands. We therefore issue Qualcomm a blanket authorization for its terminals and require it, as a secondary operator, to maintain a point of contact for any interference problems who can immediately remedy the problem or terminate operations if necessary. We also require Qualcomm to maintain records of the locations of

terminals being operated in a transportable mode and records of the ownership of vehicles on which the mobile units have been installed.[44] Finally, we require it to maintain logs of all alleged incidences of interference, the stations involved, and the outcome of the incident.[45]

III. CONCLUSION AND ORDERING CLAUSES

21. We find that Qualcomm is qualified to hold earth station licenses and that grant of its application will serve the public interest, convenience and necessity. By authorizing Qualcomm to implement its proposed system, we hope to allow two-way mobile data communications to be made available to the public in a timely manner. We emphasize, however, that implementation of the system is at Qualcomm's risk. Should Qualcomm's system cause harmful interference into fixed-satellite operations or other operations with a superior status, Qualcomm will be required to cease operations immediately. In addition, Qualcomm will be required to accept interference from all other radio services operating in the 11.7-12.2 GHz band and from those operating on a primary basis in the 14.0-14.5 GHz band.

22. Accordingly, IT IS ORDERED that Application File Nos. 869-DSE-P/L-88 and 3073-DSE-ML-88 ARE GRANTED and Qualcomm, Inc. IS AUTHORIZED to construct and operate a network of up to 20,600 temporary fixed and mobile earth stations and a fixed hub station to provide land mobile data communications services in accordance with the technical parameters and formal conditions specified in the attached instrument of authorization and subject to the following additional conditions:

a) Qualcomm, Inc. shall immediately cease operations upon notification of harmful interference into any service that has superior status, either domestically or internationally, in the 11.7-12.2 GHz and 14.0-14.5 GHz frequency bands;

b) Qualcomm, Inc. is not permitted to operate in Mode A in the forward link;

c) Qualcomm, Inc. is permitted to operate in Mode B in the forward link only upon the agreement of all affected domestic and international fixed-satellite operators;

d) In the event Qualcomm, Inc. cannot obtain an operational agreement with other satellite operators for Mode B operations, it will be required to restrict these transmissions to the center 2 MHz of the transponder or to the frequencies normally assigned to video carriers and to a maximum satellite carrier EIRP density of not more than +6.0 dBW/4 KHz within the service area;

e) The aggregate adjacent satellite interference potential from the mobile units on the return link may not exceed, at any time, that which would be caused by a single earth station operating with a power into the antenna of -14 dBW/4 KHz and an antenna that complies with the sidelobe requirements of 47 C.F.R. § 25.209 (a) for all angles along the visible portion of the geostationary-satellite orbital arc;

f) Individual mobile units are not permitted to transmit unless commanded to do so from the hub terminal via the satellite forward link, and each mobile antenna pattern, during transmission, shall be properly aligned with the geostationary-satellite orbit so that the mobile antenna's 3-dB beamwidth along the orbital arc is not more than 7 degrees for any orientation of the mobile unit;

g) Qualcomm, Inc. shall maintain a point of contact for any interference problems who can arrange to remedy the problem immediately or to terminate operations if necessary;

h) Qualcomm, Inc. shall maintain records of the locations of terminals being used in a transportable mode and records of the ownership of vehicles on which the mobile units have been installed;

i) Qualcomm, Inc. shall annually file with the Commission the number of each antenna constructed within that year, specifying the number being used in transportable and mobile modes;

j) Qualcomm, Inc. shall maintain a log recording all incidents where it is accused of causing harmful interference. The log shall record the nature of each incident, the parties involved, and the outcome. The log shall be maintained for a five year period for each incident. Qualcomm, Inc. shall notify the Commission of any complaints of interference within 14 days of its receiving a complaint. Qualcomm, Inc. shall also inform the Commission of the outcome of the incident within 14 days of its resolution.

23. Qualcomm, Inc. is afforded thirty days from the date of release of this order to decline the authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The application was initially filed by Omninet Communications Services (Omninet). Omninet filed a technical amendment to the application on May 10, 1988. A joint amendment was later filed by Omninet and Qualcomm to change the applicant to Qualcomm. Joint Amendment to Application (August 11, 1988). That portion of the original application pertaining to Omninet's proposed hub station (File Nos. 861-DSE-P/L-88 and 870-SSA-88) was dismissed at the applicant's request. To avoid confusion, all references to the applicant in this *Order* will be to Qualcomm.

[2] The MSS Applicants did not file original comments or a petition to deny Omninet's application. Section 1.45 of the Commission's rules, 47 C.F.R. § 1.45, states that "replies" to oppositions may be filed by the entity that submitted the original pleading. The MSS Applicants "reply" is therefore not authorized by our rules and is, in essence, late-filed comments. We

will nevertheless treat the MSS Applicants' filing as informal comments because doing so will not delay the resolution of this proceeding. *Cf.* 47 C.F.R. § 21.30 (b), (c).

[3] CORF's letter, filed over four months after the date for filing comments had passed, was not accompanied by a motion for leave to file or any other explanation as to why CORF did not file by the deadline. Nevertheless, we will consider the letter as informal comments. *Id.*

[4] In addition, on May 13, 1988, Geostar Corporation (Geostar) filed a motion for leave to file, and a petition to deny Omninet's application. The petition to deny, which raised issues regarding Omninet's qualifications, was later withdrawn in its entirety. *See* Letter from President, Geostar Corporation to Secretary, FCC (October 12, 1988).

[5] The radionavigation service is a shipborne radar service used by small boats. In Region 2, other services are also authorized to use this band on a primary basis. *See* para. 9, *infra*; *see also* note 17, *infra*.

[6] *See* 47 C.F.R. § 2.106.

[7] Transportable stations operate from fixed locations although the sites from which they operate will vary as the stations are moved from location to location; mobile stations operate while moving.

[8] In September 1988, Qualcomm was granted special temporary authority to operate up to 2000 user terminals subject to certain technical conditions. *See* Letter from Chief, Domestic Facilities Division to Counsel, Qualcomm, Inc. (September 16, 1988). This temporary authority was subsequently modified to permit Qualcomm to operate up to 20,000 terminals. *See* Letter from Chief, Domestic Facilities Division to Counsel, Qualcomm (December 13, 1988). No incidents of interference have been reported.

[9] Routine Licensing of Large Networks of Small Antenna Earth Stations Operating in the 12/14 GHz Frequency Bands, Mimeo No. 3588 (released April 9, 1986).

[10] Qualcomm initially plans to use Loran-C to provide this capability.

[11] The only fixed-satellite licensee to comment on the application, Contel ASC, subsequently stated that it had no objections to grant of the application as amended on May 10, 1988. *See* Letter from Counsel, Contel ASC to Secretary, FCC (June 1, 1988).

[12] *See* Letters filed by the Department of Navy-Naval Supply Systems Command, Sunbelt Express, Inc., Transporation Information Management Services, P.A.M. Transport, Inc., Burnham Services Corp., Department of Energy, KLLM, Inc., Command Systems, Inc., Tri-State Motor Transit Company, Roberts Express, and E. Allen Parkin.

[13] In is comments, ARINC suggests that this matter has a bearing on the Commission's decision to allocate spectrum for mobile-satellite services in the L-band. Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services (*MSS Proceeding*), 2 FCC Rcd 1825 (1986) (*MSS Allocation Order*). *See also MSS Proceeding*, 2 FCC Rcd 6830 (1987) (*MSS Allocation Order Reconsideration*). ARINC has filed a Petition for Further Reconsideration of the L-band allocation for mobile-satellite service. This petition is pending. In its comments, ARINC states that proposals such as Qualcomm's would reduce the demand to use the L-band spectrum for certain mobile satellite services. ARINC suggests that if the Commission should grant the Qualcomm application, this action would be further reason to reconsider the L-band spectrum allocation for MSS. In reply, the MSS Applicants state that ARINC's pleading is procedurally and substantively deficient. The MSS Applicants argue that ARINC's comments belong in the MSS allocation (L-band) proceeding and should therefore be disregarded. The MSS Applicants believe the Commission was correct to allocate L-band spectrum for MSS. We agree that the arguments raised by ARINC regarding the L-band allocations are irrelevant to Commission disposition of Qualcomm's application. Moreover, we do not believe that the need for the primary L-band allocation for mobile satellite service is in any way diminished by Qualcomm's request to provide a secondary, limited mobile satellite service in the 12/14 GHz band. The need for a primary allocation for MSS in the L-band has been elaborated at length in the *MSS Allocation Order* and *MSS Allocation Order Reconsideration*.

[14] Operations from a fixed earth station to a satellite constitute a fixed-satellite service. Therefore, the transmission links from Qualcomm's hub station to the satellite and from user terminals being used in a transportable mode to the satellite present no frequency allocation questions. This discussion is limited to those user terminals operating in a mobile mode.

[15] *See* 47 C.F.R. §§ 2.104 (d)(4)(i); 2.105 (c)(3)(i).

[16] *See* 47 C.F.R. §§ 2.104 (d)(4)(ii); 2.105 (c)(3)(ii).

[17] The domestic allocation for radionavigation service is 14.0-14.2 GHz, while the Region 2 allocation is 14.0-14.25 GHz. In addition, in Region 2, 14.40-14.50 GHz is allocated to the fixed and mobile (except aeronautical mobile) services on a primary basis.

[18] At the 1979 World Administrative Radio Conference (WARC), a secondary uplink allocation was adopted at 14.0-14.5 GHz for the land mobile satellite service but a companion downlink was not adopted at 11.7-12.2 GHz or any other frequency band. *See* Radio Regulation 859.

[19] *See, e.g.*, DBS Systems, 92 FCC 2d 64, 68 (1982); *MSS Allocation Order*, 2 FCC Rcd at 1841 (1986).

[20] Qualcomm states that: (1) the power levels on GSTAR 1 will remain the same; (2) the proposal is compatible with 2° spacing; (3) the antennas satisfy the licensing requirements for VSATs; and (4) the system will provide data communications services, a service already provided in the fixed-satellite service bands.

[21] Qualcomm also argues that even if general use of the fixed-satellite downlink band by mobile users is not permitted, Qualcomm's use of the band is permissible as an incidental use, citing Rural Cellular Service, 58 Rad. Reg. 2d (P&F) 517 (1985).

[22] *See* 47 C.F.R. § 2.102 (a). Under the International Radio Regulations, administrations may assign frequencies not in conformance with the International Table of Frequency Allocations provided that the assignment is conditioned upon the nonconforming user not causing harmful interference to services operating in accordance with the Table. Radio Regulation 342.

[23] *See* DBS Systems, 92 FCC 2d at 68.

[24] *See MSS Allocation Order*, 2 FCC Rcd at 1841. *See also MSS Proceeding*, Notice of Proposed Rule Making, 50 Fed. Reg. 8150 (February 28, 1985), at para. 4.

[25] *Cf.* Radio Regulation 342, *supra* note 22.

[26] Implementation of the Final Acts of the 1979 World Administrative Radio Conference, Second Report and Order, 54 Rad. Reg. 2d 1500 (1983).

[27] Pairing the 14.0-14.5 GHz uplink and 11.7-12.2 GHz downlink bands in the land mobile satellite service would be consistent with their pairing in the fixed-satellite service.

[28] These techniques spread the power density over a broad bandwidth, thus, according to Qualcomm, reducing the downlink power density to ensure that no unacceptable levels of interference are caused.

[29] *See* Amendment to Application (May 10, 1988) at Attachment A.

[30] In this regard, Qualcomm requests a waiver of the +6.0 dBW/4 KHz power density guideline established in our *VSAT Order* at para. 15.

[31] *See* Application Attachment 2 at 6-8.

[32] These include: (1) direct-sequence spread-spectrum techniques to spread the instantaneous spectral density of any one mobile uplink over a bandwidth of 1.0 MHz; (2) frequency hopping and frequency division multiple access techniques to ensure that the power spectral density produced by a combination of all user terminals is uniformly spread over a bandwidth of 48 MHz; and (3) carefully controlling mobile terminal transmissions so that the terminal will not transmit unless it is commanded to do so.

[33] No comments were received from operators in the radionavigation service, which has primary status in a portion of the uplink band. In addition, any interference from Qualcomm's operations into this service would be short-lived because the navigation terminals are mobile, and the seaboard terminals are unlikely to be operated in proximity to Qualcomm's land mobile terminals. Therefore, we perceive no significant interference problem in the radionavigation service. Further, the only secondary user to raise concerns about potential interference is CORF, which conducts radio astronomy operations in the 14.47-14.50 GHz band. While Qualcomm, as a secondary user in that band, has equal status with other secondary users, Qualcomm states that it will not operate in the 14.45-14.50 GHz portion of the band, and therefore will not cause any interference into the radioastronomy service. Thus, we do not believe Qualcomm's operations will cause harmful interference into any other authorized service. In any event, Qualcomm will be required to cease operations if it interferes with any service that has superior status.

[34] The MSS Applicants, in addition to echoing Contel ASC's initial concerns regarding the interference potential of Qualcomm's system, raise questions about the system's spectral efficiency. The MSS Applicants assert that Qualcomm's system will not be able to carry as much data as the mobile satellite system they are proposing in another proceeding. *See MSS Proceeding*, Second Report and Order, 2 FCC Rcd 485 (1987). We need not, however, consider the efficiency of Qualcomm's system vis a vis the MSS Applicants' proposal. The two applications are not mutually exclusive and both can be granted. Therefore, we need only determine here whether permitting Qualcomm to implement its system in the 12/14 GHz bands will serve the public interest, convenience and necessity. *See* 47 U.S.C. § 309 (a). The interference potential of Qualcomm's proposal is discussed in detail below.

[35] This is consistent with Qualcomm's plan to switch to Mode B exclusively. *See* para. 15, *supra*.

[36] Although the *VSAT Order* applies to VSAT networks in the fixed-satellite service and thus is not controlling here, we nevertheless apply the +6.0 dBW/4 KHz satellite-to-earth power density standard established for VSAT networks to Qualcomm's mobile operations. We do this because the interference potential of the satellite-to-Earth transmission is identical regardless of whether the transmission is received by fixed or mobile terminals. However, as discussed, we permit Qualcomm to operate above the +6.0 dBW/4 KHz standard if its operations can be coordinated. Thus, to that extent, we grant Qualcomm its requested waiver of the +6.0 dBW/4 KHz power density guideline. *See* note 30, *supra*.

[37] Although in its application, Qualcomm's interference analysis is based on 125 units operating simultaneously and in its May 10, 1988 amendment, Qualcomm appears to indicate that 500 units may operate simultaneously, it appears that the units are operating at different EIRPs in each of the analyses.

[38] This is the standard used for licensing VSAT networks operating in the 12/14 GHz band. *See VSAT Order*, *supra* note 9.

[39] *See* 47 C.F.R. § 25.209 (a).

[40] Application at 10.

[41] The controlling test for determining whether an entity is operating as a common carrier is set forth in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976). In that case, the D.C. Circuit stated that "implicit in the common carrier concept is that the carrier undertake to carry for all people indifferently" and that an entity is not acting as a common carrier if it makes "individualized decisions, in particular cases, whether and on what terms to deal." *Id.* at 641.

[42] *Supra* note 9.

[43] *See, e.g., VSAT Order;* Licensing of Space and Earth Stations in the Radiodetermination Satellite Service (*RDSS Licensing Order*), 104 FCC 2d 650 (1986); Schlumberger Technology Corporation, Mimeo No. 4658 (released June 7, 1984).

[44] Operators of mobile units have not been required to keep records of the location of each mobile terminal. Keeping these records would be unduly burdensome, if not impossible, and we decline to impose such a requirement on Qualcomm here. *See RDSS Licensing Order* at 666-667.

[45] We also grant Qualcomm authority to operate its previously authorized fixed transmit/receive earth station E874276, located in San Diego, California, as the hub station for its network.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

THE FLORIDA INSTITUTE OF TECHNOLOGY, INC. File No. BPED-861023ME

For a Construction Permit for a New Noncommercial Educational FM Station on Channel 212 at Palm Bay, Florida

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 1989; Released: February 14, 1989

1. The Commission has before it for consideration an application for review filed by the Florida Institute of Technology, Inc. (FIT) on February 13, 1987, seeking review of a staff action returning its above-captioned construction permit application for a new noncommercial educational FM station on reserved Channel 212C2 at Palm Bay, Florida. Also before the Commission are a supplement filed by FIT on March 10, 1987; an opposition filed March 20, 1987, by Palm Bay Public Radio, Inc. (PBPR), a mutually exclusive applicant for Channel 212A at Palm Bay, Florida; and a motion to strike and reply filed by FIT on March 24, 1987.[1]

2. On August 17, 1984, Central Florida Educational Network (Central) filed an application for a new noncommercial educational FM station on Channel 212 at Melbourne, Florida (File No. BPED-840817IA). That application was placed on an "A" cut-off list in *Public Notice*, Report No. A-91, released October 12, 1984, which established November 14, 1984, as the cut-off date for the filing of mutually exclusive applications. On November 13, 1984, PBPR filed a conflicting application (File No. BPED-841113MA). After Central's application was dismissed by staff letter on March 20, 1986, the staff erroneously placed PBPR on an "A" cut-off list (rather than a "B" cut-off list) which purportedly established October 23, 1986, as the cut-off date for the filing of applications mutually exclusive with PBPR's Palm Bay application. *See Public Notice*, Report No. A-119, released September 22, 1986. FIT tendered its application for Palm Bay, Florida, on October 23, 1986, in response to Report No. A-119.

3. By staff letter of January 16, 1987 (reference 8920-PJR/MH), the Chief, FM Branch, returned FIT's application as untimely filed pursuant to the policy stated in *Kittyhawk Broadcasting Corp.*, 7 FCC 2d 153 (1967), *appeal dismissed sub nom. Cook, Inc. v. United States*, 394 F.2d 84 (7th Cir. 1968).[2] That policy, known as the *Kittyhawk* doctrine, holds that an application will be considered timely for purposes of the cut-off rule only when it is timely filed with respect to the lead application of a group of conflicting applications. Thus, in order to have been timely filed, FIT's application had to have been filed by November 14, 1984, the original cut-off date for applications mutually exclusive, either directly or indirectly, with Central's Melbourne application. The staff concluded that PBPR had been erroneously included on Report No. A-119; that FIT's untimely application had been erroneously accepted for filing, and that FIT's application was not entitled to comparative consideration with PBPR's application. Accordingly, FIT's application was returned.

4. In its application for review, FIT characterizes the staff's action as arbitrary, unprecedented, and violative of its rights. Specifically, FIT argues that: (i) Central's "A" cut-off date should not be imposed on FIT because Central's application was dismissed; (ii) the *Kittyhawk* doctrine applies only to daisy chains; (iii) the Commission violated its own procedures in placing PBPR's application on an "A" cut-off list rather than a "B" cut-off list; and (iv) elementary fairness mandates FIT's inclusion in the Palm Bay proceeding. FIT therefore requests that the Commission reinstate its application *nunc pro tunc* by either: (i) giving legal effect to the October 23, 1986 cut-off date; (ii) waiving the cut-off rules; or (iii) estopping itself from invoking the cut-off rule in this instance. In its opposition, PBPR asserts that it should not be penalized for the staff's erroneous placement of its application on the "A" cut-off list instead of a "B" cut-off list by now taking away its deserved cut-off protection and subjecting it to competition with an applicant which chose not to timely file against the lead applicant as required by the cut-off rule.

5. As FIT notes in the application for review, had the staff followed proper procedures, PBPR's application would have been placed on a "B" cut-off list, instead of on the "A" cut-off list, and FIT's instant application would be admittedly time-barred by Central's November 14, 1984 "A" cut-off date. In *Way of Life Television Network, Inc. v. FCC*, 593 F.2d 1356 (D.C. Cir. 1979), the United States Court of Appeals for the D.C. Circuit (Court) held that no legal cut-off date had been established when the FCC failed to follow its own regulations in establishing that date: "[i]t is a well-settled rule that an agency's failure to follow its own regulations is fatal to the deviant action." *Id.* at 1359. Similarly, we do not believe that the October 23, 1986 "A" cut-off date for filing applications in conflict with PBPR's can have any legal force or effect since the staff clearly acted contrary to proper procedure in placing PBPR on the second "A" cut-off list.

6. FIT seeks to distinguish its situation from *Kittyhawk* on several grounds. First, FIT notes that in *Kittyhawk* there was no erroneous publication of a second "A" cut-off list. Second, FIT argues that since Central's application was returned prior to the filing of FIT's application and is no longer pending, Central is no longer entitled to cut-off protection, is no longer mutually exclusive with FIT's application, and, therefore, only PBPR's published "A" cut-off date should have effect. Finally, FIT argues that, unlike *Kittyhawk*, the instant proceeding does not involve a daisy chain because FIT's application directly conflicts with Central's proposal, instead of being linked into mutual exclusivity through the filing of PBPR's intervening proposal.[3] FIT thus infers that the *Kittyhawk* doctrine is limited only to daisy chained applications.

7. The Commission's cut-off procedure has always been used in broadcast services such as noncommercial educational FM radio where channels are not allocated to specific communities and licensing is done on a non-interference basis.[4] This procedure strikes a balance be-

tween the rights of applicants and potential applicants while taking into account the public interest in the expeditious provision of new service. *See Bill R. Wright*, 102 FCC 2d 1147 (1985). Its propriety has been noted by the Court as being consistent with the rights of mutually exclusive applicants defined in *Ashbacker Radio Corporation v. FCC*, 326 U.S. 327 (1945). *See, e.g., Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963). The procedure allows applications to be processed to a conclusion without interruption and without the necessity of reprocessing because of new filings and amendments to pending applications. Essential to this procedure is the retention of cut-off status even if mutual exclusivity is cured through amendment or through the dismissal of a linking application. *See Wright*, 102 FCC 2d at 1147; *United Public Broadcasting Co., Inc.*, 57 RR 2d 1605, n.1 (1985). For these reasons, FIT fails in its attempt to distinguish the instant case from *Kittyhawk* and its progeny based on the dismissal of Central's application or the absence of a "daisy chain."

8. The Commission has stated that "prospective applicants have long been on notice that under our cut-off procedures they could be barred from filing applications due to the tendering of unlisted applications which directly or indirectly interlink with listed cut-off applications." *Wright*, 102 FCC 2d at 1146. Applicants that ignore or fail to understand the cut-off procedures assume the risk that they will be prevented from filing competing applications and cannot be heard to later complain that they lacked adequate notice. *See id.* at 1147. Lack of personal knowledge of a cut-off date is an insufficient ground upon which to base a waiver of the rule. *See Sterling Communications, Inc.*, 51 RR 2d 1252, 1253 (Broadcast Bur. 1982). For in order to ensure uniform procedure and impartial treatment, the Commission insists on strict enforcement of the cut-off rule even though it sometimes leads to "harsh" results. *See, e.g., Nazarene Theological Seminary Radio Corporation (KTSR)*, 52 RR 2d 559 (Broadcast Bur. 1982). It is well settled that the rule will be waived only for the most unusual and compelling reasons. *See, e.g., United Public*, 57 RR 2d at 1606; *RKO General, Inc. (WNAC - TV)*, 89 FCC 2d 297, 321 (1982). A prerequisite to such a waiver is a showing by the applicant that it has exercised reasonable diligence and any tardiness is attributable to circumstances beyond its control. *See Bronco Broadcasting Co., Inc.*, 58 RR 2d 909, 911 (1976). We find that FIT's admitted ignorance of the first "A" cut-off date announced in Report No. A-91 was not a circumstance beyond FIT's control. Through the exercise of ordinary diligence, FIT could have determined that its application should have been filed by the first "A" cut-off date. Accordingly, FIT's "ignorance" cannot excuse its failure to timely file its application nor support the instant request for waiver of the cut-off rule.

9. FIT further maintains that the staff's erroneous establishment of a second "A" cut-off date divested the first "A" cut-off date of legal effect. FIT cites the Commission's decision in *Sterling Recreation Organization Co.*, 80 FCC 2d 319 (1980), a television case of a similar factual background wherein the Commission found it unnecessary to extend the *Kittyhawk* doctrine to the television and commercial FM services, which utilize a Table of Allotment system whereby channels are allocated to specific communities, thus effectively eliminating the daisy chain effect and the attendant procedural disadvantages flowing therefrom. In *Sterling*, a group of competing applications for a new TV station at Vallejo, California, were filed in response to an "A" cut-off list. Prior to the Vallejo "A" cut-off date, an application for a new TV station at Stockton, California, was filed specifying a site short-spaced to and thus mutually exclusive with the Vallejo applications. The Commission subsequently published another "A" cut-off list for the filing of applications mutually exclusive with the Stockton application. On this latter cut-off date, but after expiration of the original Vallejo cut-off date, Sterling tendered its application for Stockton. The Commission was thus faced with the question of whether Sterling's application had to have been filed by the Vallejo cut-off date or the published Stockton cut-off date. The Commission decided to give effect to the second cut-off date and thus Sterling's application was accepted for filing.

10. In making this determination, the Commission explicitly stated that it would continue to apply the *Kittyhawk* doctrine to the AM and noncommercial educational FM services where applications are granted on a non-interference basis and where daisy chain situations are not uncommon.[5] Having determined that the *Kittyhawk* doctrine did not apply to the TV and commercial FM services and that every channel in their respective Table of Allotments should have its own cut-off date, the Commission noted an additional element dictating acceptance of Sterling's application: the issuance of a second "A" cut-off list. We continue to believe that consideration of such factors may be appropriate in non-*Kittyhawk* situations. However, we do not believe that this factor should control the outcome of this noncommercial educational FM case where the *Kittyhawk* doctrine continues to apply and where it has been long recognized that harsh, yet necessary, results will sometimes follow from strict adherence to the cut-off procedure. The weighing of such "harsh" results as those suffered by FIT against the concomitant public interest benefits inherent in the cut-off procedure has already been calculated by the Commission. *See, e.g., United Public*, 57 RR 2d at 1606; *Nazarene*, 52 RR 2d at 563. This equation would, of course, be notably different in a case such as *Sterling Recreation* where the *Kittyhawk* doctrine does not apply and the necessity to adhere to that doctrine is effectively eliminated by the presence of a Table of Allotments and a policy whereby each allotment in the Table has its own cut-off date. Such a system allows the Commission to provide more equitable, individual-oriented treatment without sacrificing service benefits to the public. Thus, we reject FIT's claim that the inadvertent establishment of a second "A" cut-off date in this case mandates acceptance of its application.

11. In seeking a waiver of the cut-off rule, FIT cites to a 1983 staff letter granting a motion for acceptance of the television application of New Life Evangelistic Center, Inc. for Channel 25, Jefferson City, Missouri (reference 8940-AEA). In the letter, the staff permitted acceptance of an application filed subsequent to the pertinent cut-off date for the equitable reasons involved in that particular proceeding which related to the staff's provision of inaccurate information over the telephone to that applicant based on an error in the unofficial microfiche records. We believe that waiver of the cut-off date and acceptance of the late-filed application by the staff in the Missouri proceeding was contrary to established Commission precedent, *see, e.g., 220 Television, Inc.*, 81 FCC 2d 575 (1980), and is therefore not controlling here. *Cf. North*

Texas Media, Inc. v. F. C. C., 778 F.2d 28, 32-33 (D.C. Cir. 1985) (Staff deviation from established Commission policies and improvident grant of waiver does not deprive agency of authority to require future applicants to meet standards for waiver).

12. FIT next asserts that the Commission is equitably estopped from invoking the cut-off rule against it. FIT looks to the Commission's discussion in *M & C Broadcasting, Inc.*, FCC 85-217, released April 29, 1985, where the elements of equitable estoppel were set forth as follows: (1) the party to be estopped must know the facts; (2) the party to be estopped must intend that its conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) must rely on the former's conduct to its injury. Additionally, in invoking the doctrine against the federal government, affirmative misconduct must be shown. *Id* at 3; *see also Western Tele - Communications, Inc.*, Common Carrier Bureau, released March 13, 1986. FIT argues that it has satisfied all of the traditional elements because it was not aware of the first "A" cut-off date and justifiably relied to its detriment on the Staff's inadvertent establishment of a second "A" cut-off date for PBPR's application. FIT also states that the "affirmative misconduct" element is met by its mere demonstration that the Commission incorrectly published the second "A" cut-off date.

13. We do not agree with FIT's assertion. The Commission considered a similar argument in *M & C Broadcasting* where the petitioner sought to estop the Commission from invoking a cut-off date against its late-filed application because of a staff member's failure to inform M&C of the publication of the cut-off list. In ruling against M&C, the Commission determined that the traditional elements of estoppel had not been satisfied since the Commission did not possess exclusive knowledge of the cut-off list which had been published in a public notice and M&C could not claim ignorance of the cut-off date since the public notice was available through the exercise of reasonable diligence. Nor did the Commission find that M&C had established affirmative misconduct--"the heavier burden of proof required against the government." *Id.* at 4. Our reasoning in *M & C Broadcasting* applies with equal force here where FIT cannot claim ignorance of the first "A" cut-off list which was also published in a public notice and therefore was available through the exercise of reasonable diligence. *See* para. 8 *supra*. Furthermore, FIT has not satisfied its burden of establishing affirmative misconduct on the part of the Commission." Mere negligence by the government does not amount to affirmative misconduct where there is no showing of facts establishing an active or intentional concealment. *See United States v. Harvey*, 661 F.2d 767, 775 (9th Cir. 1981), *cert. denied*, 459 U.S. 833 (1982).

14. Finally, we believe that any injury to FIT as a result of our strict adherence to the cut-off rule must be compared to the inherent unfairness to PBPR which would occur if we permitted FIT's late-filed application to have equal footing with PBPR who has proceeded diligently. *See RKO General*, 89 FCC 2d at 320. Although an error on the part of the Commission's staff was a contributing factor in FIT's undertaking the time and trouble of filing an application in response to what was an invalid cut-off notice, it would be unfair to PBPR if we were to consider FIT's late filed application in conjunction with PBPR's timely filed application. On balance, the best course is to properly apply our processing rules and let the burden of such action fall where it may. In this case, the burden of the proper application of those rules falls on FIT, who filed its application in response to a cut-off list that should never have been issued.

15. Accordingly, for the reasons stated herein, IT IS ORDERED, That FIT's application for review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] A week following the submission of its application for review, FIT filed a supplement thereto containing the table of contents and summary statement required by 47 C.F.R. § 1.49. FIT explains that its omission of these required components of an application for review was due to its inadvertent error. FIT later filed a motion to strike PBPR's opposition alleging untimeliness and failure to request waiver of the filing deadline. We find FIT's request to excuse its own carelessness while also seeking strict enforcement of our procedural rules against PBPR's filings inconsistent. We will accept FIT's supplement, deny FIT's motion to strike, and consider PBPR's opposition. Furthermore, since we did not request a reply from FIT, its reply is an unauthorized pleading and will not be considered. *See* 47 C.F.R. § 1.115(f).

[2] In *Kittyhawk Broadcasting Corp.*, 7 FCC 2d 153 (1967), *appeal dismissed sub nom. Cook, Inc. v. US*, 394 F.2d 84 (7th Cir. 1968), an application for a new AM station at Kettering, Ohio, was cut-off on August 17, 1965. On that date, an application for a new AM station at Bloomington, Indiana, was filed which was mutually exclusive with the Kettering application. Subsequently, an application for a new AM station at Ellettsville, Indiana, was filed which, although not directly in conflict with the Kettering application, was directly in conflict with the Bloomington application and was thus indirectly interlinked, or "daisy chained," into mutual exclusivity with the Kettering proposal. The Commission concluded that the Ellettsville application should have therefore been filed by Kettering's cut-off date. Accordingly, the Ellettsville application was returned as untimely.

[3] A "daisy chain" results when applications filed in response to a cut-off list serve to link together other applications that are not themselves directly in conflict with the lead cut-off application.

[4] Under the cut-off procedure, applications accepted for filing are placed on an "A" cut-off public notice which provides a thirty-day period for the filing of applications that are directly in conflict with those listed or that are indirectly interlinked with those listed by new applications filed prior to the expiration of the thirty-day period. The procedure is designed to permit the Commission to cease accepting applications from new parties so that a choice can be made between timely filed applicants. *See, e.g., RKO General, Inc. (WNAC - TV)*, 89 FCC 2d 297, 320 (1982). After any such competing applications are filed, these applications are placed on a "B" cut-off notice which provides for a 30-day period for the filing of petitions to deny.

[5] FIT avers that the language of *Sterling Recreation* concerning the application of the *Kittyhawk* doctrine to the noncommercial educational FM service is *obiter dictum* and therefore, not controlling. FIT is incorrect. The *Kittyhawk* doctrine arose in the context of an AM proceeding and the Commission in *Sterling Recreation* affirmed that it would continue to apply the doctrine in those situations (i.e., AM and noncommercial educational FM) where there is no Table of Allotments. The application of *Kittyhawk* to AM and noncommercial educational FM was subsequently affirmed in *Bill R. Wright*, 102 FCC 2d 1142 (1985).

[6] FIT's sole support of its affirmative misconduct argument is *Santiago v. INS*, 526 F.2d 488 (9th Cir. 1975), *cert. denied*, 425 U.S. 971 (1976). However, in that case, the US Court of Appeals for the 9th Circuit ruled that the immigration officers' failure to inform aliens of pertinent regulations or to solicit particular information from these aliens did not amount to such affirmative misconduct as to estop the government from deportation.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of **Pine - Aire**
Broadcasting Corporation, Inc.,
Licensee of Station WRLS-FM,
Hayward, Wisconsin

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 1988; Released: February 14, 1989

By the Commission:

1. The Commission has before it for consideration: (a) a *Memorandum Opinion and Order* (*MO & O*), released April 4, 1988; and (b) an Application for Review thereof, filed May 6, 1988, by Pine-Aire Broadcasting Corporation, Inc. (Pine-Aire), licensee of Station WRLS(FM), Hayward, Wisconsin.

2. The *MO & O* imposed a forfeiture against Pine-Aire in the amount of 7,500.00 for the repeated violation of Section 73.1211 the Commission's Rules. With the exception of lotteries conducted by a State acting under authority of State law, Section 73.1211 proscribes the broadcast of advertisements of, or information concerning, lotteries. A lottery is a scheme involving the elements of prize, chance, and consideration. *FCC v. American Broadcasting Company, Inc.*, 347 U.S. 284 (1954). As explained more fully in the record in this proceeding, the Commission staff determined that WRLS(FM), on behalf of the Lac Courte Oreille (Indian) Tribal Government, broadcast advertisements for bingo games five times per day, six days per week, between September 1, 1986, and at least March 17, 1987. The bingo games in question constituted lotteries because they contained the three elements described above.

3. Section 1.115 of the Commission's Rules explicitly states that an "application for review . . . shall be filed within 30 days from the date of public notice of such action, as that date is defined in 1.4(b) of these rules." Section 1.4(b) of the Commission's Rules defines the date of public notice for documents released by the Commission (whether or not published in the Federal Register) as the day after "the release date" which "appears on the face of the document."

4. In the instant case, the release date which appears on the face of the subject *MO & O* is April 4, 1988. Since an application for review of the *MO & O* was required to have been filed within 30 days thereof, Pine-Aire should have filed its Application for Review no later than May 5, 1988. The Commission's stamp affixed to Pine-Aire's Application for Review, however, bears a filing date of May 6, 1988. Consequently, Pine-Aire's Application for Review is procedurally defective and subject to summary dismissal. Nevertheless, we will consider it on its merits.

5. In its Application for Review, Pine-Aire contends that: (a) the forfeiture assessed against it in this case is excessive and without justification because the Commission failed to consider that Pine-Aire had "fulfilled all its responsibilities in seeking clarification from the St. Paul Field Office of the FCC regarding the status of Indian governments"; and (b) the Commission erred in its determination that Indian tribal governments do not fall within the "State-conducted" exception to the lottery prohibition.

6. Both of Pine-Aire's arguments have previously been fully considered and rejected. In the *MO & O*, released April 4, 1988, the Bureau, pursuant to delegated authority, stated that it had investigated the licensee's claim concerning its attempt to obtain clarification from the St. Paul Field Office. It determined that, although Pine-Aire may have initially received inconclusive advice from the St. Paul Field Office as to the propriety of broadcasting the advertisements in question, the Field Office subsequently contacted WRLS-FM later that same day to inform the station that the then-proposed broadcasts would be unlawful.

7. With respect to Pine-Aire's argument regarding the status of Indian tribal governments, Pine-Aire has presented no evidence warranting reversal of our position taken in *Rex K. Jensen (KRTZ - FM, Cortez, Colorado)*, 3 FCC Rcd 1779 (1988). Therein, we held that an Indian tribal government is not a "State," as that term is defined at 18 United States Code Section 1307. In support of its position to the contrary, Pine-Aire cites *Phillips Petroleum Co. v. United States E. P. A.*, 803 F.2d 545 (10th Cir. 1986); *Bryan v. Itasca County*, 426 U.S. 373 (1976); *Santa Clara Pueblo v. Matinez*, 436 U.S. 49 (1978); and *Seminole Nation v. U. S.*, 316 U.S. 286 (1942). With the exception of *Phillips Petroleum Co.*, none of the cases upon which Pine-Aire has relied is relevant to the licensee's argument that an Indian government is considered to be within the meaning of "State" for the purposes of the anti-lottery broadcast statute or that Section 1307 should be construed to reach that result.

8. Pine-Aire relies on *Phillips Petroleum Co.* in support of its position that the Federal Government in other instances has found that the statutory definition of "State" may include Indian governments. We find Pine-Aire's reliance flawed. The statute involved in *Phillips Petroleum Co.*, the Safe Drinking Water Act of 1974, established a regulatory mechanism to ensure the quality of publicly supplied drinking water. Although the 1974 Act contained references to requirements for "state" programs, it made no mention at the time of Indian tribes or Indian lands other than to include "Indian tribal organization" within the definition of "municipality." In 1986, however, Congress amended the Safe Drinking Water Act by adding a provision that specifically authorized the Administrator of the Environmental Protection Agency "to treat Indian tribes as States under this title." 803 F.2d at 548 (citations omitted). Turning to the instant case, Congress has made no comparable amendments to the broadcast lottery statute to provide that Indian tribal governments be included within the definition of "State," pursuant to 18 U.S.C Section 1307. Unless Congress amends Section 1307 to include Indian tribal governments specifically, the term "State" must be construed so as to exclude them from the definition.

9. Based on the foregoing, we do not believe that the forfeiture penalty should be reduced or rescinded. Moreover, we have again reviewed the factors set forth in Section 503(b)(2) of the Communications Act of 1934, as amended, and conclude that the amount of forfeiture assessed against Pine-Aire in this proceeding is justified.

10. ACCORDINGLY, for the foregoing reasons, the Application for Review, filed May 6, 1988, by Pine-Aire Broadcasting Corporation, Inc., licensee of Station WRLS-FM, Hayward, Wisconsin, IS DENIED.

11. Pursuant to Section 503(b) of the Communication's Act of 1934, as amended, IT IS HEREBY ORDERED that Pine-Aire Broadcasting Corporation, Inc., licensee of Station WRLS-FM, Hayward, Wisconsin, FORFEIT to the United States of America the sum of SEVEN THOUSAND, FIVE HUNDRED DOLLARS (7,500.00) for its repeated violations of Section 73.1211 of the Commission's Rules. Payment of this forfeiture shall be made in the manner described in the *Memorandum Opinion and Order*, released April 4, 1988, in this proceeding, commencing on the first day of the first full month following thirty days after release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-17

In the Matter of

Amendment of Section 73.202(b), RM-6543
Table of Allotments,
FM Broadcast Stations.
(Warren Grove, New Jersey)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 25, 1989; Released: February 15, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by General Electronics Development Corporation (petitioner), requesting the allotment of Channel 289A to Warren Grove, New Jersey, as a first local FM service.

2. Petitioner states that Warren Grove is an unincorporated place within census block 350 in Stafford Township, Ocean County, New Jersey, with a 1980 U.S. Census population of 4,845 persons for the census block. It describes Warren Grove as a principal community for a large, relatively rural area, and that Warren Grove's boundaries are recognized by road identification signs. Petitioner goes on to state that Warren Grove has several businesses and service facilities, including the Warren Grove Volunteer Fire Company, the Warren Grove Luncheonette and a nationally known orchid nursery.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission fairly, equitably and efficiently distribute frequencies " . . . among the several States and communities." The Commmission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. Warren Grove is not listed in the U.S. Census or incorporated.[1] Although petitioner points out that Warren Grove has a volunteer fire department and several businesses, we request any additional information demonstrating that Warren Grove has social, economic, governmental or cultural indicia to qualify it as a "community" for allotment purposes. In addition, petitioner failed to state its intention to apply for Channel 289A, if allotted to Warren Grove. It is therefore requested to do so in comments.

4. Channel 289A can be allotted to Warren Grove in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2]

5. In view of the above discussion, we believe it is appropriate to seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Warren Grove, New Jersey, as follows:

	Channel No.	
City	Present	Proposed
Warren Grove, New Jersey	--	289A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 7, 1989,** and reply comments on or before **April 24, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William L. Bruce, III, Esq.
Stanford & Bruce
34 East Main Street
Mays Landing, New Jersey 08330-1798
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Secuons 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] We note that Warren Grove is listed in the 1988 Edition of the Rand McNally Commercial Atlas, with a population of 200 persons. However, mere geographical location is not sufficient to establish "community" status. *See, Vimville, Mississippi*, 48 FR 5974 (1983).

[2] The coordinates for this allotment are North Latitude 39-44-47 and West Longitude 74-22-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-18

In the Matter of

Amendment of Section 73.202(b),	RM-6510
Table of Allotments,	RM-6586
FM Broadcast Stations.	
(Clinton and Saint Pauls, North Carolina, and Chesterfield, South Carolina)	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 25, 1989; Released: February 15, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it two mutually exclusive petitions for rule making. C. Curtis Sigmon (Sigmon) requests the allotment of Channel 297A to Chesterfield, South Carolina, as the community's first local FM service. Sampson Broadcasting Co., Inc. (SBC) requests the substitution of Channel 295C2 for Channel 297A at Clinton, North Carolina, and the modification of its license for Station WCLN-FM to specify operation on the higher powered channel. In order to accommodate the upgrade at Clinton, SBC further requests the substitution of Channel 297A for Channel 295A at Saint Pauls, North Carolina, which is unoccupied but applied for.[1] Co-channel Class A allotments require a separation of at least 105 kilometers. However, Saint Pauls and Chesterfield are located only 101 kilometers apart and we are unable to site restrict the Chesterfield allotment in such a manner so as to avoid the conflict.

2. Sigmon and SBC each state an intention to apply for their respective channels, if allotted. SBC states Station WCLN is the only FM station licensed to Sampson County. It goes on to claim that upgrading Station WCLN-FM to a Class C2 will enable the station to increase the population which it served from its present 43,728 persons to 159,826 persons, thus providing improved service to the community and Sampson County.

3. Channel 297A can be allotted to Chesterfield in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) southeast to avoid a short-spacing to Station WRHM, Channel 296A, Lancaster, South Carolina, and to the pending application of Station WKZL, Channel 298C, Winston-Salem, North Carolina. Channel 295C2 can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.4 kilometers (5.2 miles) south to accommodate petitioner's desired transmitter site. Channel 297A can be allotted to Saint Pauls in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in the pending application of Lumbee Regional Development Association, Inc. (ARN-880727MN).[2]

4. Since the proposals herein are mutually exclusive, we shall provide each petitioner with an opportunity to demonstrate in comments why its community should receive the allotment. In this regard, the parties should be guided by the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). It should also be noted that the Commission generally favors a first local service over an upgrade in facilities for an existing station. *See, Benton, Arkansas, et al.*, 2 FCC Rcd 1963, 1965 (1987).

5. Should SBC's proposal prevail, we are also proposing herein the modification of Station WCLN-FM's license to specify Channel 295C2 in lieu of its present Class A channel. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Clinton or require SBC to demonstrate the availability of an additional equivalent channel for use by such parties. In addition, Lumbee Regional Development Association, Inc. would be permitted to amend its pending application for Channel 295A at Saint Pauls to specify the alternate channel without loss of cut-off protection. *See, Phillipsburg, Kansas*, 48 FR 10844 (1983).

6. Accordingly, we seek comments on the following alternate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to read as follows:

City	Channel No. Present	Proposed
	Option I	
Clinton, North Carolina	297A	295C2
Saint Pauls, North Carolina	295A	297A
	Option II	
Chesterfield, South Carolina	--	297A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **April 7, 1989**, and reply comments on or before **April 24, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Jack W. Whitley, Esq.	C. Curtis Sigmon
27 Pine Avenue	8 Park Drive
Takoma Park, Maryland 20912	York, South Carolina 29745
(Counsel to SBC)	(Petitioner for Chesterfield)

9. IT IS ORDERED, That the Secretary SHALL SEND a copy of this *Notice of Proposed Rule Making*, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the applicant for Channel 295A at Saint Pauls, as follows: Lumbee Regional Development Association, Inc., P.O. Box 68, Pembroke, North Carolina 28372.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service*. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies*. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings*. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The Commission dismissed SBC's earlier request for the substitution of channels at Clinton and St. Pauls, North Carolina, because the change in channels at St. Pauls would require the applicant to change its transmitter site, in violation of the Commission's doctrine on the substitution of Docket 84-231 channels. *See Memorandum Opinion and Order*, 51 FR 36401, October 10, 1986. SBC has filed a timely petition for reconsideration stating that Lumbee Regional Development Association, Inc., has since amended its application to specify a transmitter site which can be used if Channel 297A is allotted to St. Pauls. Therefore, since the substitution of channels at St. Pauls can

now be accomplished in compliance with the Commission's policy, we are granting SBC's petition for reconsideration and seeking comments on its proposal.

[2] The coordinates for Channel 295C2 at Clinton are North Latitude 34-55-39 and West Longitude 78-17-30. The coordinates for Channel 297A at Saint Pauls are North Latitude 34-42-59 and West Longitude 78-56-51. The coordinates for Channel 297A at Chesterfield are North Latitude 34-40-52 and West Longitude 80-03-03.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

South Central Bell Telephone
Company and Southern Bell
Telephone and Telegraph Company

Plan for Comparably Efficient
Interconnection of Enhanced
Services Providers for
Synchronous Protocol
Processing Services

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 1989; Released: February 15, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On August 19, 1988, pursuant to the requirements the Commission adopted in the *Computer III* proceeding,[1] South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth) filed a Comparably Efficient Interconnection (CEI) plan (the Plan) for Synchronous Protocol Processing Services. Synchronous protocol processing is an enhanced service that allows protocol conversions between different synchronous protocols or between synchronous and asynchronous protocols.[2] No comments were filed on the Plan, and only BellSouth filed a reply. *Computer III* requires a Bell Operating Company (BOC) that wishes to offer an enhanced service, or class of enhanced services, on an unseparated basis prior to implementation of a comprehensive Open Network Architecture Plan (ONA) to submit and obtain approval of a CEI plan for the specific services it proposes to offer. In this Order, we approve the Plan, subject to certain conditions.

II. THE PLAN

A. *Service Description*

2. BellSouth proposes to provide protocol conversion between different synchronous protocols or between synchronous and asynchronous protocols by offering a variety of synchronous protocol conversion services for use with its Public Packet Switching Network (PPSN). According to BellSouth, the protocol conversion services will provide customers with an efficient, economical and competitive solution to their data transport needs. Under the Plan, BellSouth initially expects to offer the following synchronous protocols: CCITT X.25; CCITT X.75; BSC (Binary Synchronous Protocol); 3270 DSP (Display System Protocol) BSC; BSI (Binary Synchronous Interface) BSC – contention mode; MLI (Multi-leaving Interface) BSC – multileaving mode; IBM SNA/SDLC (Systems Network Architecture/Synchronous Data Link Control); 3270 SNA; 2780/3780 HASP/RJE (Houston Automatic Spooling Protocol/Remote Job Entry); and QLLC X.25/SDLC. The Plan also proposes to offer additional synchronous protocols as new equipment becomes available and is deployed or as manufacturers release specifications for additional synchronous protocols.

3. BellSouth will use a packet/assembler/disassembler (PAD) function to perform the actual protocol conversions. This function may occur in an "access module" (also known as an access concentrator) or in a "network module" (also known as a packet switch) located in BellSouth's central office. BellSouth will provide the connections to the access module or network module through dedicated facilities.

4. The Plan does not apply to asynchronous/X.25 and asynchronous/X.75 conversions to the extent that BellSouth is already permitted to collocate the equipment for those services in its central office. However, the Plan does apply to the marketing of those services, as well as the others it describes, on an unseparated basis.

B. *Proposed CEI Arrangements*

5. BellSouth plans to offer protocol processing services on an unseparated basis. BellSouth states that all the basic services that will be used in providing protocol processing services will be available in existing tariffs. BellSouth proposes to charge itself the same tariffed rates as those charged other enhanced service providers (ESPs) for the basic services used in association with the enhanced protocol conversions described in the Plan.

C. *Other Nonstructural Safeguards*

6. BellSouth states that its procedures for implementing the customer proprietary network information (CPNI) and nondiscrimination reporting requirements are described in its ONA plan, and it attaches that portion of its ONA plan at Appendices A & B.

III. DISCUSSION

7. We conditionally approve BellSouth's Plan. We conclude that BellSouth has complied with the CEI parameters described in the *Phase I Order*.[3] BellSouth satisfies the CEI pricing requirements since all the basic services that BellSouth will use to offer protocol processing will be available to all ESPs and end users through generally applicable tariffs.[4] Both BellSouth's enhanced service operations and its competitors will have access to the same basic services at the same rates and on the same terms and conditions.

8. We also approve the CPNI part of BellSouth's plan, subject to the following condition. The *BOC ONA Order*[5] discusses in detail a number of CPNI issues, and requires all the BOCs to amend their ONA plans to conform to these requirements. When BellSouth's ONA amendments for CPNI become effective, BellSouth must implement those amendments for its protocol conversion services as well as its other enhanced services. In the interim period until such amendments for CPNI are approved and implemented, BellSouth may follow the CPNI procedures proposed in its CEI plan. As in the *BellSouth VMS Order*,[6] we prohibit BellSouth from using CPNI to identify particular customers of existing protocol conversion competitors for "targeted" marketing efforts.

9. The *BOC ONA Order* also addresses nondiscrimination reporting issues and requires several revisions to the reporting formats that BellSouth and the other BOCs propose.[7] Once BellSouth amends its reporting formats and the amendments become effective, BellSouth should incorporate these amendments into this CEI plan. As an interim measure, BellSouth may submit reports in the format proposed in the Plan. Finally, we note that BellSouth does not discuss the network information disclosure requirement in its Plan. We condition our approval of the plan on BellSouth's compliance with this requirement.[8]

IV. ORDERING CLAUSES

10. IT IS HEREBY ORDERED, that pursuant to Sections 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. §553, BellSouth's CEI Plan for Protocol Processing Services IS APPROVED, subject to the conditions described herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order*), *modified on reconsideration*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration*), *further reconsideration*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration*), *second further reconsideration pending, appeals pending sub nom. California v. FCC*, No. 87-7230 (9th Cir.) (pet. for rev. filed May 28, 1987) and *sub nom. Illinois Bell Telephone Co. v. FCC*, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988). *See also Report and Order*, 2 FCC Rcd 3072 (*Phase II Order*), *modified on reconsideration*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration*), *further reconsideration pending*, (pet. for rev. filed Apr. 20, 1988), *California v. FCC*, No. 88-7183 (9th Cir.) (pet. for rev. filed May 13, 1988) and *Illinois Bell Telephone Co. v. FCC*, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988).

[2] Plan at 4.

[3] *Phase I Order*, 104 FCC 2d at 1039-1043.

[4] Plan at 13.

[5] Filing and Review of Open Network Architecture Plans, CC Docket 88-2, Phase I, *Memorandum Opinion and Order*, FCC 88-381 (released Dec. 22, 1988).

[6] *See* BellSouth Plan for Comparably Efficient Interconnection for Voice Messaging Services, DA 88-1947, released Dec. 23, 1988, at para. 86.

[7] BOC ONA *Order* at paras. 467-431, 481-488.

[8] BellSouth must, of course, comply with this requirement in disclosing technical information about its CEI services prior to offering the protocol processing services described in the Plan.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

South Central Bell Telephone
Company and Southern Bell
Telephone and Telegraph Company

Technical Trials of Coin
Messaging Service

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 1989; Released: February 15, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On October 7, 1988, BellSouth Corporation's operating telephone companies, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth), filed a petition for waiver (Petition) of our comparably efficient interconnection (CEI) requirements in order to conduct a series of technical trials of a public telephone coin messaging service (CMS). In this order, pursuant to the authority delegated to us by the Commission,[1] we approve BellSouth's waiver request.

II. BACKGROUND

2. The *Computer III* orders[2] permit the Bell Operating Companies (BOCs) to offer a specific enhanced service on an unseparated basis only after approval of a CEI plan, which ensures that basic facilities are available to other enhanced service providers in a functionally equal manner. The Commission has discretion to waive the CEI rules on a showing of special circumstances that justify an exemption. [3] The *Phase I Reconsideration* noted that waivers of the CEI requirements may be appropriate for trials of new technology that are limited in time and for small test groups of users and for "me-too" waiver requests that follow the terms or conditions of *Computer II* waivers already granted for identical services.[4]

3. In a prior order[5], we granted a CEI waiver for six months for a trial that Bell Atlantic proposed to conduct to evaluate several technologies for providing CMS. Bell Atlantic proposed to conduct the technical trials in up to three local access and transport areas (LATAs), for no more than 300 coin stations in each trial LATA. Bell Atlantic's trial proposed to make CMS available to any casual user of a test coin station. Bell Atlantic stated that it would book all costs associated with CMS in unregulated accounts in accordance with Part 64 of our rules.

4. We found that a waiver for the trial was particularly appropriate because of the potential utility of CMS, which, if provided efficiently, could benefit payphone users. In addition, we found that the results of the trial would provide Bell Atlantic with all the information necessary to file a complete CEI plan for the service, a precondition for an integrated offering of CMS on an ongoing basis.[6]

III. THE PROPOSED TRIAL

A. *Service Description*

5. BellSouth states that for purposes of its trial, its public telephone CMS will operate in the same general manner as Bell Atlantic's CMS. It will allow a caller from one of BellSouth's public coin telephones to leave a recorded message to be delivered later to a party whose line is busy or not answered. In such a situation, the intercept equipment located in the network will play a recording asking whether the caller wishes to leave a message. If the caller chooses not to leave a message, there is no charge. However, if the caller chooses to leave a message, he or she must take some positive action such as pressing a key or depositing coins. In this situation, the network forwards the call and the called number to a voice messaging processor, which instructs the caller on the procedure for leaving the message and then records the message. This processor will be connected to the central office switch by standard business enchange service lines for which full tariff rates will be paid. After a caller leaves a message, the processor dials the called number at regular intervals over a two-hour period or until the telephone is answered. The caller's recorded message is played back to whomever answers.[7]

B. *Trial Arrangements*

6. BellSouth states that the purpose of its proposed trials is to evaluate new technologies that would be used to provide CMS. It plans to conduct concurrent technical trials in three LATAs: Atlanta, Georgia; New Orleans, Louisiana; and Memphis, Tennessee -- with up to 300 coin stations involved in each LATA trial. BellSouth adds that the trials will be limited in duration to no more than six months, as we required in the Bell Atlantic CMS Order.[8]

7. BellSouth states that all costs associated with planning, implementing, and providing its CMS and all investment in new equipment will be booked and allocated in accordance with Part 64 of the Commission's Rules and BellSouth's approved cost allocation manual, as amended.[9] BellSouth states that customers who choose to leave a message will pay the full regulated price of a regular coin telephone call and an additional amount to cover the messaging service, with the former treated as regulated revenues and the latter as unregulated revenues. Existing coin telephone equipment will continue to be assigned to regulated public telephone service accounts, while the additional equipment and expenses required to provide the enhanced service will be assigned to nonregulated activities.[10]

IV. POSITIONS OF PARTIES

8. BellSouth argues that no party will be prejudiced by a waiver of the CEI requirements for these trials, since the quality and price of the basic pay telephone service is unaffected, no new basic service is being provided to BellSouth's CMS operations that is unavailable to any other user, including a messaging service, and none of the unregulated expenses and investment used in providing

CMS will be borne by basic service ratepayers.[11] BellSouth adds that since this service will only be provided from the public telephone sets in its trial, our customer proprietary network information (CPNI) rules should not apply.[12] No comments were filed in response to our request for public comment on BellSouth's petition. On November 18, 1988, BellSouth filed reply comments supporting the waiver petition, stating that approval is warranted, first, because no comments were filed in opposition to the petition, and second, because its waiver request and proposed trial are similar in all material respects to Bell Atlantic's waiver request that we recently approved.

V. DISCUSSION

9. We find that BellSouth's request satisfies our standard for waiver of the CEI rules. The BellSouth petition describes a CMS trial that is essentially identical to Bell Atlantic's CMS trial that we recently approved. [13] Both petitions describe nearly identical services, a similarly restricted number of total coin telephones used in the trial, and identical cost and revenue allocation procedures. In addition, BellSouth's petition proposes a trial of a maximum duration of six months, the limit we imposed on Bell Atlantic's trial.

10. The Commission contemplated CEI waivers for limited trials of new technology, and also in "me-too" situations.[14] The analysis we performed in the *Bell Atlantic CMS Order* applies as well to the six-month trial of CMS that BellSouth proposes. We thus grant BellSouth's petition for waiver of the CEI rules for its CMS trial. As with Bell Atlantic's CMS waiver, if BellSouth desires to offer CMS on an unseparated basis, it must first obtain approval of a CEI plan for that service.

VI. ORDERING CLAUSES

11. IT IS HEREBY ORDERED, that pursuant to Sections 1, 4(i) and (j), 201,202, 203, 205, 218,and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. § 553, and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, BellSouth's Petition for Waiver of CEI Requirements to Conduct Technical Trials of Public Telephone Coin Messaging Service IS APPROVED, subject to the conditions described herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* 47 C.F.R. §§ 0.91 and 0.291 (1987).

[2] Amendments of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order*), *modified on reconsideration*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration*), *aff'd on further reconsideration*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration*), *second further reconsideration pending, appeals pending sub nom. California v. FCC*, No. 87-7230 (9th Cir.) (pet. for rev. filed May 28, 1987) and *sub nom. Illinois Bell Telephone Co. v. FCC*, No. 88-1364 (D.C. Cir.) pet. for rev. filed May 16, 1988). *See also Report and Order*, 2 FCC Rcd 3072 (*Phase II Order*), *modified on reconsideration*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration*), *further reconsideration pending*, (pet. for rev. filed Apr. 20, 1988), *California v. FCC*, No. 88-7183 (9th Cir.) (pet. for rev. filed May 13, 1988) and *Illinois Bell Telephone Co. v. FCC*, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988).

[3] Section 1.3 of the Commission's rules provide that "[a]ny provision of the rules may be waived by the Commission on its own motion or on a petition if good cause therefor is shown." 47 C.F.R. § 1.3 (1986); *see also WAIT Radio v.* FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

[4] 2 FCC Rcd at 3067 n. 161.

[5] Bell Atlantic Telephone Companies Petition for Waiver of CEI Requirements to Perform Technical Trials of Coin Messaging Service, *Memorandum Opinion and Order*, 3 FCC Rcd 5741 (1988) (*Bell Atlantic CMS Order*).

[6] *Bell Atlantic CMS Order* at 9-10, para. 22.

[7] Petition at 2-3.

[8] *Id.*

[9] BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, *Memorandum Opinion and Order*, 3 FCC Rcd 128 (1988); *further order*, 3 FCC Rcd 6954 (1988).

[10] BellSouth states that any additional cost pools that may be required for offering its service will be added to its cost allocation manual at least 60 days prior to initiation of the trials. Petition at 3-4.

[11] *Id.* at 4-5.

[12] *Id.* at 5.

[13] *See Bell Atlantic CMS Order.*

[14] *See Phase I Reconsideration*, 2 FCC Rcd at 3067 n. 161.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-89-037

Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to convey half-interests in capacity in the digital tie cable between the Keawaula, Oahu, Hawaii and Makaha, Oahu, Hawaii cable stations.

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: February 7, 1989; Released: February 15, 1989

By the Chief, International Facilities Division:

1. On December 20, 1988, American Telephone and Telegraph Company (AT&T) filed an application with the Commission requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to convey half-interests in capacity in the digital tie cable connecting the Keawaula, Oahu, Hawaii and the Makaha, Oahu, Hawaii cable stations to various international carriers. The application was placed on public notice January 4, 1989. No comments were received in response.

2. On August 5, 1988, the Commission authorized GTE Hawaiian Telephone Company (HTC) to construct an underground digital tie cable on the island of Oahu, Hawaii.[1] In that order, AT&T was granted authority to acquire half-interests in all 45 Mb/s of the tie cable on an indefeasible right of use (IRU) basis. The Commission also authorized HTC to convey matching half-interests in all of the capacity of the tie cable to Teleglobe Canada, Inc. (Teleglobe). Thus, at present, all capacity in the tie cable is assigned jointly to AT&T and Teleglobe.

3. AT&T now seeks authority to convey IRU interests to, or enter into use agreements with, international carriers desiring to acquire capacity in the digital tie cable at the Makaha, Oahu cable landing station.[2] In consideration for the IRUs, AT&T will receive approximately 2,516 per half-interest in each MAUO. [3] According to AT&T, carriers acquiring IRUs in the tie cable will also be required to pay a proportionate share of operations and maintenance costs.[4]

4. In the *Tie Cable Order*, the Commission found that there was a clear need for the construction of a digital tie cable to interconnect existing as well as future cable systems landing at the Keawaula and Makaha stations. The present analog tie cable connecting these stations is saturated and cannot be enhanced to accommodate increased circuit or technological demands. Initially, the digital tie cable will serve as a link between the Australia-New Zealand-Canada (ANZCAN) and the HAW-4/TPC-3 cable systems.[5] Interconnection of these two cable systems is part of the Commission's overall plan for introducing fiber optic cable in the Pacific Ocean Region (POR).[6] Given the importance of the cable to the POR, we conclude that it will be in the public interest to allow AT&T to convey interests in the digital tie cable to international carriers.

5. Accordingly, IT IS ORDERED that application File No. I-T-C-89-039 IS GRANTED, and AT&T is authorized to convey half-interests in capacity in the digital tie cable on an IRU or Use Agreement basis to international carriers seeking to access to the ANZCAN and HAW-4/TPC-3 cable systems as follows:

1) Kokusai Denshin Denwa, Co. Ltd., 60 half-MAUOs;

2) Korea Telecommunication Authority, 6 half-MAUOs;

3) Eastern Telecommunications Philippines, Inc., 1 half-MAUO;

4) Philippine Long Distance Telephone Co., 19 half-MAUOs;

5) International Telecommunications Development Corp., 18 half MAUOs;

6) Telecommunication Authority of Singapore, 7 half-MAUOs;

7) Cable and Wireless (Hong Kong) Ltd., 30 half-MAUOs; and

8) the Government of Brunei Darussalam, 3 half-MAUOs.

6. IT IS FURTHER ORDERED that the Commission retains jurisdiction over all matters relating to ownership, management, maintenance and operation of the digital tie cable to assure the most efficient use of the cable and of all means of communication between the U.S. and the POR.

7. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] GTE Hawaiian Telephone Company *et. al.*, 3 FCC Rcd 17 (1988)(Tie Cable Order). The cable consists of a buried 1.3 micron single mode fiber optic submarine lightwave cable with three fiber pairs, ducts connecting the two cable stations and digital multiplex terminal units (MX'3) equipped with optical interface cards. The tie cable has an initial design capacity of 45 megabits per second (Mb/s) and provides 630 Minimum Assign-

able Units of Ownership (MAUO). A MAUO is a unit of ownership designated as the minimum, practical unit of ownership. A MAUO consists of 64,000 usable bits per second and an additional 9,684.656 bits per second required for multiplexing purposes.

[2] AT&T seeks to convey interests to the following international carriers: Kokusai Denshin Denwa, Co. Ltd. (KDD), Korea Telecommunication Authority (KTA), Eastern Telecommunications Philippines, Inc. (ETPI), Philippine Long Distance Telephone Co. (PLDT), International Telecommunications Development Corp. (ITDC), Telecommunication Authority of Singapore (TELECOMS), Cable and Wireless (Hong Kong) Ltd. (CW (HK)) and the Government of Brunei Darussalam (JTB). The agreement to convey these interests also includes a number of U.S. international service carriers. AT&T states that each U.S. carrier will file its own application with the Commission to obtain authority to acquire their respective portions of capacity.

[3] This figure is based on AT&T's net book costs divided by the 357 MAUOs comprising the notional capacity of the tie cable. The Memorandum of Understanding (MOU) setting forth the details of the agreement defines notional capacity as the total number of assigned MAUOs in the cable at any given time.

[4] The MOU sets the cost sharing percentages based on capacity assignments as follows: 1) JTB, 0.42017%; 2) CW(HK), 4.20168%; 3) KDD, 8.40336%; 4) KTA, 0.84034%; 5) ETPI, 0.14006%; 6) PLDTM 2.66106%; 7) TELECOMS, 0.98039%; and 8) ITDC, 2.52101%.

[5] Initially, the following points will be served by the interconnection of the ANZCAN and HAW-4/TPC-3 cable systems: Canada, Fiji, Norfolk Island, New Zealand, Austrailia, the United States, Japan, Guam, Hong Kong, Korea, Taiwan, the Philippines, Brunei, Papua New Guinea and Singapore.

[6] *See* Pacific Planning, 102 FCC 2d 353 (1985).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

DIRECT COMMUNICATIONS, INCORPORATED — File No. I-T-C-89-036

Application for authority to operate as an international resale carrier.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 7, 1989; Released: February 15, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on December 16, 1988 by Direct Communications, Incorporated (DCI) requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing common carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on January 4, 1989. No comments were received.

2. The applicant is already providing domestic resale services. It now proposes to resell international switched voice services in competition with other common carriers already providing resale of such services. In recent authorizations of new entrants the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future public convenience and necessity require the provision of international switched voice services to the general public by DCI.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-89-036 IS GRANTED, and DCI is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs F.C.C. Nos. 1 and 2, MCI's Tariff F.C.C. No. 1, US Sprint's Tariffs F.C.C. Nos. 1 and 2, and Allnet's Tariff F.C.C. No. 1 between the U.S. and those points listed in those tariffs.

5. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of its execution.

6. IT IS FURTHER ORDERED the the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61 (October 1, 1987).

8. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in the Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n.2.

[2] FCC v. RCA Communications, Inc. 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

Amendment of Subpart C of
Part 95 of the Commission's Rules
Concerning Data Transmissions and
Permissible Communications.

ORDER

Adopted: February 6, 1989; Released: February 15, 1989

By the Chief, Private Radio Bureau:

1. This Order amends Section 95.212 of the Commission's Rules, 47 C.F.R. § 95.212. The amendment is intended to conform and clarify the rules concerning the transmission of data by stations in the Radio Control (R/C) Radio Service.

2. Section 95.211(b)(2) of the Commission's Rules, 47 C.F.R. § 95.211(b)(2), authorizes an R/C station to transmit one-way communications from a sensor at a remote location to turn on or off an indicating device for the operator. This rule frequently generates questions about whether an R/C station is permitted to transmit data. The transmission of data, however, is prohibited.[1] This prohibition is contained in Part 95, Subpart E, the technical regulations for the Personal Radio Services. Section 95.627(e) of the Commission's Rules, 47 C.F.R. § 95.627(e), specifically prohibits non-voice data transmissions in the R/C service.

3. The operating rules for the R/C service, however, contained in Part 95, Subpart C, are silent with respect to the transmission of data. For the benefit of equipment manufacturers and other members of the public, we are incorporating the prohibition against data transmissions, contained in Section 95.627(e) of Subpart E of the Commission's Rules, into Section 95.212 of Subpart C. We are also amending Section 95.212 by including a statement that where multiple sensors or devices are used, tone or other encoded signals used only for the purpose of identifying a specific sensor or device are not considered to be data and, thus, may be transmitted.

4. This Order has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. The rule amendments adopted herein conform and clarify the Radio Control (R/C) Service Rules relating to data transmissions consistent with the technical regulation for the Personal Radio Services. They constitute a minor, non-controversial amendment to the Commission's Rules in which the public is not likely to be interested. Therefore, we find in good cause that compliance with the notice and comment requirements of the Administrative Procedure Act is unnecessary. *See* Section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B).

6. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C §§ 154(i) and 303(r), and Section § 0.331 of the Commission's Rules, 47 C.F.R. § 0.331.

7. Accordingly, IT IS ORDERED that Section 95.212 of the Commission's Rules IS AMENDED as set forth in the attached Appendix, effective **March 31, 1989.**

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

APPENDIX

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 95 continues to read:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303.

2. Section 95.212 is revised by adding a new paragraph (f):

§ 95.212 (R/C Rule 12) What communications are prohibited?

* * * * *

(f) To transmit data. Tone or other signal encoding, however, is not considered to be data when only used either for the purpose of identifying the specific device among multiple devices that the operator intends to turn on/off, or the specific sensor among multiple sensors intended to turn on/off an indicating device for the operator.

FOOTNOTE

[1] Although an R/C station may not be used to transmit data, Section 95.211(b)(2) authorizes an R/C station to transmit a signal from a sensor to activate an alarm system indicating that a certain condition exists (*i.e.*, level of temperature, pressure, voltage, etc. has been exceeded.)

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-374

In the Matter of

Inquiry into Alleged
Abuses of the Commission's
Processes by Applicants for
Broadcast Facilities

ORDER

Adopted: January 12, 1989; Released: February 15, 1989

BY THE COMMISSION:

1. The Commission has before it for consideration an Appeal of Interlocutory Order (Appeal), filed September 20, 1988, by Bernard Boozer (Boozer).[1] Boozer appeals an *Order*, FCC 88M-3030, released September 15, 1988, of the Presiding Judge, denying Boozer intervention in the above-captioned non-public proceeding.

2. On August 4, 1988, the Commission released an *Order* in MM Docket No. 88-374, commencing an inquiry, pursuant to Section 403 of the Communications Act of 1934, as amended, into alleged abuses of its processes by applicants for broadcast facilities. *See* 3 FCC Rcd 4740 (1988). The *Order* was adopted on the basis of information indicating that the Commission's processes had been significantly abused by applicants for new broadcast stations and for the assignment of existing licenses and construction permits. The Commission noted that, in several instances, multiple applications were apparently filed using fictitious persons as principals and/or as consultants/advisors. The Commission further stated that all of the applications which were the subject of the *Order* share a common denominator in that each appeared to have been filed either on behalf, or with the assistance, of Boozer. In our *Order*, we specifically delegated the authority to issue subpoenas, and directed that such subpoena power should be exercised in accordance with Section 1.331 - 1.340 of the Commission's Rules.

3. In his Appeal, Boozer claims that by making our adjudicatory rules concerning the issuance of subpoenas applicable to this proceeding, we thereby intended for all of our rules relating to hearing proceedings (Subpart B) to also apply. Boozer also claims that the Commission has violated his fourth and fifth amendment rights by denying his intervention in this proceeding. This latter claim apparently is based on the fact that attorneys with whom Boozer has had a professional relationship have been served with Commission subpoenas requiring the production of certain relevant documents.

4. Boozer's Appeal will be denied. As a threshold matter, Section 1.223 of our rules, which permits intervention in adjudicatory proceedings, is not applicable to investigations instituted pursuant to Section 403 of the Communications Act of 1934, as amended. *Inquiry re: Operations of Certain Broadcast Stations*, 22 FCC 2d 469, 470 (1970). Moreover, simply because we made one portion of our rules -- those relating to the issuance of subpoenas -- applicable to this investigation, does not mean that we intended for all sections of our adjudicatory rules to apply. In any event, as the Presiding Judge correctly noted in his *Order* denying Boozer's request for intervention, there are no parties other than the Commission in an inquiry instituted pursuant to Section 403 of the Communications Act, as amended. *Local TV Programming*, 24 RR 782 (1963); *Domestic Telegraph Service*, 24 RR 956 (1963); *Inquiry re: Operations of Certain Broadcast Stations*, *supra*; *Payola Inquiry*, 39 RR 2d 1632 (ALJ 1977), *affirmed*, 42 RR 2d 847 (1978); *Inquiry re: Southern Bell and Southwestern Bell*, 69 FCC 2d 1234 (1978), *partial recon. denied*, 70 FCC 2d 705 (1979); *Inquiry Re: Station WJAN*, FCC 79-519, adopted September 10, 1979. Consequently, the rule upon which Boozer relies in seeking intervention is not applicable to this proceeding.

5. Boozer's constitutional claim apparently relates to his right to assert the attorney-client privilege regarding documents in the possession of attorneys with whom he had a professional relationship. Boozer's right to assert the attorney-client privilege is, however, in no way dependent upon his intervention in the instant proceeding. His attorneys, when testifying, may refuse to answer a particular question on the ground that a response might reveal privileged information. In fact, Boozer has already exercised his attorney-client privilege with regard to attorneys who have been issued subpoenas in this proceeding, and, in each instance, the attorneys have asserted the privilege. Consequently, it is clear that Boozer need not be a party to assert whatever privileges he may have with regard to attorneys who may have represented him in the past.[2]

6. Accordingly, IT IS ORDERED that the Appeal of Interlocutory Order, filed on September 20, 1988, by Bernard Boozer, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Boozer's Appeal is erroneously directed to the Review Board. The Review Board, however, does not have authority in inquiries such as this. *See* Section 0.365 of the Commission's rules. Jurisdiction over Boozer's Appeal is with the Commission.

[2] We also note that the American Bar Association's Code of Professional Responsibility places a duty on attorneys to protect the confidentiality of communications from their clients. *See* Disciplinary Rule 4-101.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-27

In the Matter of

Great American Radio Corp.
Spokane, Washington

Licensee of Radio Station
KCKO(AM), Spokane, Washington

Order to Show Cause Why the
License of Station KCKO(AM),
Spokane, Washington, Should
Not Be Revoked

ORDER TO SHOW CAUSE AND NOTICE OF APPARENT LIABILITY

Adopted: January 19, 1989; Released: February 15, 1989

By the Commission:

1. The Commission has before it for consideration: (a) the license of Great American Radio Corp., for Radio Station KCKO(AM), Spokane, Washington; and, (b) the results of the Commission's investigation into KCKO's unauthorized silent status.

2. On May 13, 1985, the Commission granted KCKO permission to remain silent until August 15, 1985. After that permission expired, attempts to contact KCKO by mail resulted in return of Commission correspondence marked "unclaimed." Commission personnel, thereafter, attempted inspection and monitoring to ascertain the station's status. Monitoring during the week of March 23, 1987, revealed that the station was not operating. An attempt to inspect the station at its studio's last known address, N. 2804 Argonne Road in Spokane, WA, on March 23, 1987, was unsuccessful. The studio was vacant and locked, with a "For Rent" sign in front. A visit to the transmitter site did not reveal any evidence of a radio transmitter building or antenna towers. Subsequent to the attempted monitoring and inspection, the Commission sent a letter of inquiry to the licensee. The letter, dated June 13, 1988, was returned stamped: "Returned to Sender-Attempted Not Known."[1] Thus, it appears that the station has not resumed operation since August 15, 1985. Furthermore, the licensee has neither requested Commission permission to remain off the air since its silent authority expired on August 15, 1985, nor turned in its license, in apparent violation of Sections 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

3. Accordingly, IT IS ORDERED, That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Great American Radio Corp. is DIRECTED TO SHOW CAUSE why the license for Radio Station KCKO(AM) Spokane, WA, should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Great American Radio Corp. violated Sections 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Great American Radio Corp. possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, is directed to serve upon Great American Radio Corp., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

5. IT IS FURTHER ORDERED, That pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* Section 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* Section 1.92(c) and (d) of the Commission's Rules. [3]

7. IT IS FURTHER ORDERED, That if it is determined that the hearing record does not warrant an Order revoking the license for Station KCKO(AM), Spokane, WA, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against Great American Radio Corp. in an amount not exceeding twenty thousand dollars (20,000.00) for the willful and repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful or repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Order by *Certified Mail - Return Receipt Requested*, to:

Great American Radio Corp.
Radio Station KCKO(AM)
N. 2804 Argonne Road
Spokane, WA 99206

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any change in its mailing address.

[2] Section 73.1740(a)(4) provides:

> In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

> The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

[3] The Commission has recently delegated authority for cases such as this to the Mass Media Bureau. *See In the Matter of Radio Northwest Broadcasting Company*, MM Docket 88-107, Adopted December 6, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-28

In the Matter of

Mega Broadcasting Corp.
Paris, Kentucky

Licensee of Radio Station
WRPZ(AM), Paris, Kentucky

Order to Show Cause Why the
License of Station WRPZ(AM),
Paris, Kentucky, Should
Not Be Revoked

ORDER TO SHOW CAUSE AND NOTICE OF APPARENT LIABILITY

Adopted: January 19, 1989; Released: February 15, 1989

By the Commission:

1. The Commission has before it for consideration: (a) the license of Mega Broadcasting Corp. for Radio Station WRPZ(AM), Paris, Kentucky; and, (b) the results of its investigation into WRPZ's unauthorized silent status.

2. On November 20, 1987, the Commission received a complaint alleging that WRPZ(AM) had not broadcast programming since October 11, 1987. Investigation by Commission personnel determined that the station had definitely ceased operation by the end of November 1987. Monitoring by Commission staff during the week of May 23, 1988, indicated that the station remained non-operational. Subsequent to the attempted monitoring, the Commission sent a letter of inquiry to the licensee at the address that appeared in Commission records. The letter, dated June 17, 1988, was returned stamped: "Returned to Sender. No Forwarding Order on File."[1] Thus, it appears that the station has not resumed operation since at least November 1987. Furthermore, the licensee has neither requested Commission permission to remain off the air nor turned in its license, in apparent violation of Sections 73.1740(a)(4) and 73.1750 of the Commission's Rules.[2]

3. Accordingly, IT IS ORDERED, That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Mega Broadcasting Corp. is DIRECTED TO SHOW CAUSE why the license for Radio Station WRPZ(AM) Paris, KY, should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Mega Broadcasting Corp. violated Sections 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Mega Broadcasting Corp. possesses the requisite qualifications to be or remain licensee of the captioned radio station.

4. IT IS FURTHER ORDERED, That the Chief, Mass Media Bureau, is directed to serve upon Mega Broadcasting Corp., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

5. IT IS FURTHER ORDERED, That pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* Section 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* Section 1.92(c) and (d) of the Commission's Rules.

7. IT IS FURTHER ORDERED, That if it is determined that the hearing record does not warrant an Order revoking the license for Station WRPZ(AM), Paris, KY, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE shall be issued against Mega Broadcasting Corp. in an amount not exceeding twenty thousand dollars ($20,000.00) for the willful and repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful or repeated violation of Sections 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion herein should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

9. IT IS FURTHER ORDERED, That the Secretary send a copy of this Order by *Certified Mail - Return Receipt Requested*, to:

Mega Broadcasting Corp.
Radio Station WRPZ(AM)
525 High Street, No. 204
Paris, KY 40578

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Section 1.5 of the Commission's Rules requires that the licensee keep the Commission informed of any change in its mailing address.

[2] Section 73.1740(a)(4) provides:

> In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

> The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-180

In the Matter of

Southwestern Bell Telephone Company — Transmittal Nos. 1537 and 1560

Revisions to Tariff F.C.C. No. 68

MEMORANDUM OPINION AND ORDER

Adopted: January 27, 1989; Released: February 16, 1989

By the Commission:

1. On April 22, 1988, the Common Carrier Bureau (Bureau) designated the above-captioned transmittals for investigation.[1] The Designation *Order* required Southwestern Bell Telephone Company (Southwestern) to file certain information concerning the "Network Data Reporting" (NDR) provision of its tariff relating to 800 Access Service. On June 24, 1988, Southwestern filed Transmittal No. 1658, which eliminated the mandatory NDR requirement under investigation. Therefore, the matters at issue in this proceeding are now moot and the proceeding is terminated.

2. By way of background, Southwestern filed Transmittal No. 1537 on March 20, 1987. The proposed revisions imposed separate reporting obligations on customers depending upon whether a given 800 Service call was interstate or intrastate in nature. MCI Communications Corporation (MCI) filed a petition for partial rejection, or in the alternative, for suspension and investigation. US Sprint Communications Company (Sprint) filed a petition to reject Transmittal No. 1537. In response to these petitions, Southwestern filed Transmittal No. 1560, which deleted certain provisions of its earlier proposal which pertained to intrastate reporting requirements. The Bureau denied the petitions filed by MCI and Sprint and the tariff, as revised, became effective on May 16, 1987.[2]

3. Soon thereafter, MCI and Sprint filed petitions for reconsideration, investigation, and clarification. The Bureau dismissed the petitions for reconsideration, but instituted an investigation of the lawfulness of Southwestern's reporting requirements. That order directed Southwestern to file a direct case describing its position with respect to the issues designated for investigation. *Designation Order*, 3 FCC Rcd at 2342.

4. Southwestern then filed a motion for extension of time to file its direct case. Southwestern explained in its motion that it was preparing to file a tariff that would satisfy the Bureau's concerns which prompted the investigation. The motion was granted.[3] Southwestern later requested an indefinite extension of time in which to file its direct case. It explained that it had filed the revised tariff, Transmittal No. 1658, on May 20, 1988. No oppositions were filed and it expected the tariff to become effective on June 24, 1988. Southwestern asserted in its request that the proposed tariff revisions eliminated the mandatory NDR requirements. Therefore, Southwestern alleged, the matters at issue in this proceeding would become moot and there was no need for it to file its direct case. The Bureau granted the motion.[4]

5. Transmittal No. 1658 became effective, as scheduled, on June 24, 1988. As this transmittal eliminated the mandatory NDR requirement at issue in the investigation of Transmittal Nos. 1537 and 1560, we conclude that the investigation of these transmittals is moot.

6. Accordingly, IT IS ORDERED that the investigation of Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal Nos. 1537 and 1560, CC Docket No. 88-180, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Southwestern Bell Telephone Company, Order Designating Issues for Investigation, CC Docket No. 88-180, 3 FCC Rcd 2339 (1988) (*Designation Order*).

[2] Southwestern Bell Telephone Company, Order, Transmittal Nos. 1537 and 1560, 2 FCC Rcd 3125 (1987).

[3] Southwestern Bell Telephone Company, Order, CC Docket No. 88-180, DA 88-785, released May 24, 1988.

[4] Southwestern Bell Telephone Company, Order, CC Docket No. 88-180, DA 88-899, released June 14, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-105

In the Matter of

Revisions to AT&T Communications Tariff F.C.C. No. 1 Hospitality Network Service — Transmittal No. 1046

Application for Review

MEMORANDUM OPINION AND ORDER

Adopted: January 27, 1989; Released: February 15, 1989

By the Commission:

1. On January 22, 1988, the Common Carrier Bureau released an Order suspending and initiating an investigation of the above-referenced transmittal in which AT&T Communications (AT&T) proposed to introduce Hospitality Network Service (HNS).[1] HNS is a new AT&T switched network offering designed to be attractive to users such as hotels, hospitals, universities, and other traffic aggregators which have a high volume of both "1+" and "0+" calling. Under Transmittal 1046, HNS customers with monthly traffic volumes of at least 4 million minutes each of 1+ and 0+ calling were to receive a rate of 18 cents per minute for 1+ calls as well as commission payments for each 0+ call made from that customer's premises. The Bureau found, *inter alia*, that AT&T's plan to pay commissions to HNS subscribers for their 0+ calls could constitute an unlawful rebate of tariffed charges in violation of Section 203(c)(2) of the Communications Act, 47 U.S.C. § 203(c)(2). The Bureau also concluded that petitioners had raised other issues which warranted further investigation, and stated its intention to designate those issues in a subsequent Order.

2. On January 25, 1988, AT&T filed an application for review of the *January 22 Order*, which it described as an "emergency" application,[2] accompanied by a "Motion for Expedited Briefing Schedule." AT&T requested that this Commission vacate the *January 22 Order* and permit Transmittal 1046 to become effective immediately.[3] On February 26, the Bureau adopted an Order designating issues to be investigated.[4] AT&T filed a direct case in response to the *Designation Order* on March 22, 1988, reiterating the arguments in its earlier application for review. Subsequently, on April 22, 1988, AT&T withdrew Transmittal 1046 and filed a revised version of HNS under Transmittal No. 1197, which became effective on June 28, 1988.[5] AT&T's application for review of the *January 22 Order*, however, remains pending.

3. AT&T's withdrawal of Transmittal 1046 eliminates the need to investigate this tariff. The investigation initiated in CC Docket No. 88-105, therefore, is terminated. Further, AT&T's withdrawal of Transmittal 1046 renders moot its request to vacate the *January 22 Order* and permit that transmittal to become effective. AT&T's application for review is therefore dismissed.[6]

4. Accordingly, IT IS ORDERED that the investigation of AT&T Communications Transmittal No. 1046, Hospitality Network Service, CC Docket No. 88-105, IS TERMINATED.

5. IT IS FURTHER ORDERED that the application for review filed by AT&T Communications with respect to Revisions to AT&T Communications Tariff F.C.C. No. 1, Hospitality Network Service, Transmittal No. 1046, CC Docket No. 88-105, 3 FCC Rcd 975 (1988) IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Revisions to AT&T Communications Tariff F.C.C. No. 1, Hospitality Network Service, Transmittal No. 1046, CC Docket No. 88-105, 3 FCC Rcd 975 (1988) (*January 22 Order*).

[2] The use of such terms in a petition, motion, application, etc. is not a desirable practice. Parties who believe that expedited consideration is warranted should make that request in a separate motion, letter, etc.

[3] On February 2, 1988, Marriott Corporation (Marriott), an operator of hotel and motel facilities, submitted comments in support of AT&T's petition; MCI filed an opposition to AT&T's request for an expedited briefing schedule on February 4, 1988; International Telecharge, Inc. (ITI) filed an opposition to AT&T's application for review on February 11, 1988.

[4] AT&T Communications Tariff F.C.C. No. 1, Transmittal No. 1046, Order Designating Issues for Investigation, CC Docket No. 88-105, 3 FCC Rcd 1465 (1988) (*Designation Order*).

[5] *See* Revisions to AT&T Communications Tariff F.C.C. No. 1, Hospitality Network Service, Order, 3 FCC Rcd 4169 (1988).

[6] AT&T's request for an expedited briefing schedule to permit a decision on the merits to be issued on or before Feburary 12, 1988, is also moot and is therefore dismissed. Even were the request not moot, however, this Commission would not be inclined to set a briefing schedule which would, in effect, deny interested parties sufficient opportunity to respond to an application for review.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1145
Phase I

In the Matter of

UNITED
TELECOMMUNICATIONS, INC.

Investigation of Access and
Divestiture Related Tariffs

ORDER

Adopted: February 1, 1989; Released: February 15, 1989

By the Chief, Common Carrier Bureau:

1. On December 21, 1988, the United Telephone Company of the Carolinas (United) filed a petition for waiver of the notification requirement contained in Appendix B to the Memorandum Opinion and Order, FCC 85-293, CC Docket No. 83-1145, released June 12, 1985 (Allocation Plan). Appendix B describes the rules that local exchange carriers (LEC) must use in offering equal access to its customers. United requests a waiver of the requirement that customers be given six month notice prior to a LEC's conversion of its central office to equal access. No petitions were filed against United's waiver request.

2. United explains that in its October 6, 1988 notice to interexchange carriers (IC) of central office conversions scheduled for April 15, 1989 one site, Beaufort South Carolina was inadvertently omitted. United Petition for Waiver, filed Dec. 21, 1988 (Petition) written notice regarding the Beaufort conversion was provided on December 12, 1988. Petition at 2. United further explains that the ICs participating in the other conversions have agreed that the four month notice of the Beaufort conversion "has not and will not prejudice them." *Id.* Additionally, ICs not participating in these other conversions have indicated that they are also not interested in the Beaufort conversion. *Id.*

3. United indicates that it could comply with the six month notice requirement by delaying the Beaufort customer data. *Id.* at 3. United contends, however, that the public interest would be better served by waiving the six month notice requirement and permitting the Beaufort conversion to occur as planned. *Id.*

4. The Common Carrier Bureau has reviewed United's request and we have concluded that the public interest will be served by granting it a waiver of the Appendix B, Allocation Plan requirement that LECs provide six month notice prior to central office opposed United's petition.

5. IT IS THEREFORE ORDERED that the petition for waiver sought by the United Telephone Company of the Carolinas IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-120

In the Matter of

Flexible alocation of
frequencies in the Domestic
Public Land Mobile Service
for paging and other services

FIRST REPORT AND ORDER

Adopted: January 18, 1989; Released: February 15, 1989

By the Commission:

1. On May 14, 1987, we issued a Notice of Proposed Rule Making (NPRM), 2 FCC Rcd. 2795, 52 Fed. Reg. 19741 (May 27, 1987) requesting comments on proposed changes to our rules regarding the paging and two-way mobile frequency allocations. The proposed changes would affect Sections 22.501(b), the conventional mobile two-way channels, Section 22.501(k), the UHF-TV band common carrier channels available for two-way use in 13 large metropolitan areas, and Section 22.501(p), regarding the remaining nationwide paging frequency.

2. In this Order we address issues pertaining to Sections 22.501(b) and 22.501(p), and amend these rules accordingly. This Order is divided into two sections; the first addresses conventional two-way mobile frequencies (Section 22.501(b) of the Rules) and the second addresses nationwide paging frequencies (Section 22.501(p) of the Rules). Our consideration of issues pertaining to Section 22.501(k) and any corresponding amendments thereto will be addressed in a *Second Report and Order* that we will issue shortly.

I. CONVENTIONAL TWO - WAY MOBILE FREQUENCIES

A. Background

3. Two-way conventional mobile channels are composed of frequency pairs; one frequency of each pair is used for fixed station transmission to mobile units (hereinafter "base frequency"). The other half of the pair is used for transmission by mobile units back to the fixed station location (hereinafter "mobile frequency").[1]

4. We currently grant licenses by reference to the base frequency only. The associated mobile frequency does not appear on the base station license form, nor are any mobile frequencies stored in the Commission's data base. Individual mobile units are not separately licensed, but mobile units can communicate only with a particular base station on the mobile frequency associated with that station's base frequency.

5. In *Revision and Update of Part 22 of the Public Mobile Radio Services Rules, Report and Order*, CC Docket No. 80-57, 95 F.C.C.2d 769, 822-823 (1983) (hereinafter *1983 Order*), we amended Section 22.501(b) of the Rules to provide that Very High Frequency (VHF) and Ultra High Frequency (UHF) common carrier mobile frequencies could be used to offer one-way paging service in addition to the traditional two-way public land mobile service "provided that two-way service is offered." Prior to this amendment, the rule indicated that two-way service must be the primary use of the frequencies, while one-way service could be a secondary use. In amending the rule, we stated that:

> paging should be encouraged, but on frequencies specifically allocated for this use. . . .[P]aging on two-way channels has the potential to drive out two-way service stunting its development and thwarting the development of more efficient paging technologies. . . .[A]llowing one-way paging on two-way frequencies raises a question of spectrum efficiency in that one-half of a paired channel remains unused.[2]

6. In that Order, we also stated that the extensive use of two-way channels for paging stemmed from a shortage of paging channels. We found that the public interest requires a more stringent approach in regulation of two-way frequency licensing, because use of two-way frequencies for one-way service constitutes an inefficient use of spectrum. We found that so long as potential two-way subscribers could request such service from licensees, there would be sufficient justification for licensees' retaining the paired frequencies even if they also had one-way traffic. We cautioned however:

> While it is likely that most two-way service will be provided on cellular systems in the future, we would be remiss in permitting a *de facto* reallocation of the 44 paired VHF and UHF channels to paging. Moreover, it is quite possible that conventional two-way service will continue to meet the needs of many users. . . . *1983 Order*, *supra*, at 822-823.

7. Additionally, we stated that carriers without interest in providing two-way service should exchange their channels for a one-way paging channel, and that "[a]t some point it may well be desirable to consider reallocating the paired 150 and 450 MHz channels." *Id.* at 823.

8. Since the *1983 Order* was released, our observation of the mobile services industry, as well as reports from licensees, indicate a dramatic increase in the trend for cellular service to claim much of the two-way mobile telephone traffic. At the same time, conventional two-way channel licensees inform us that they primarily have demand for one-way services. Moreover, vast and numerous wide-area systems have been constructed using two-way mobile channels, which apparently serve paging customers almost exclusively.

9. In an effort to ensure that licensees comply with the *1983 Order*, we issued a Public Notice on July 15, 1986.[3] Therein we noted that many applications for two-way channels include engineering showings inconsistent with provision of two-way service. Accordingly, we stated our

intention to scrutinize closely applications for demonstration that the requested frequencies could be used for two-way service. In addition, we stated in the July 1986 Public Notice that "additional two-way channels will not be authorized where the required need showings almost exclusively detail one-way paging utilization."

10. Telocator Network of America (Telocator) petitioned for reconsideration of the Public Notice, arguing that little or no demand exists for two-way service. It stated that radio common carriers (RCCs) have constructed extensive wide-area systems in reliance on the amended rule, which removed the primary/secondary distinction between two-way and one-way services. In a supplement to its petition, Telocator proposed that we amend our rules to expand permissible uses of the mobile portion of the two-way channels.[4] It also proposed that we eliminate the two-way capability requirement.[5]

11. In light of this request, we proposed, in our NPRM, making conventional mobile frequencies available for use in an unpaired configuration, either by licensing the base and mobile frequencies separately or continuing to license them in pairs. If licensed in pairs, we proposed to permit licensees to deploy the spectrum capacity as they wished, such as offering one or two-way service, control and other point-to-to point functions, and resale of channel capacity. If licensed separately, we proposed three possible outcomes: first, an applicant could be licensed for a pair of frequencies if it planned to use both; second, an applicant could be licensed only for the base station frequency; third, an applicant could be licensed only for the mobile frequency. In addition, we requested comments concerning appropriate interference standards and need showings for the various alternatives.

B. Positions of the Parties

12. The most detailed and extensive proposal for flexible use of conventional mobile frequencies (150 MHz and 450 MHz bands) was submitted by Telocator. On behalf of Telocator, Dr. George L. Schrenk provided engineering reports which describe an analysis of wide-area system expansion and standards for interference protection for both base and mobile transmitters. In addition, Dr. Schrenk describes his opinion of interaction between mobile frequency transmitters and the Basic Exchange Telecommunications Radio Service (BETRS) which is a component of Rural Radio Service. *See Report and Order*, 3 FCC Rcd 214, CC Docket 86-495 (1988).

13. Telocator proposes that all conventional mobile authorizations remain in a paired configuration, and that Carey procedures[6] continue to apply to base facilities. According to Telocator, mobile-frequency transmitters should not be permitted to operate independently of a base station transmitter and should be located within the 37 or 39 dBu contour of the associated base frequency transmitter. Telocator proposes that regardless of the base frequency use, the reliable service contour values (37 dBu for VHF and 39 dBu for UHF) remain the same.

14. Telocator proposes that we modify Section 22.16(e)[7] of the Commission's Rules to reduce the number of circumstances under which a traffic load showing would be required by applicants for additional channels. The existing rule requires that a specific level of traffic loading be demonstrated before we grant an applicant a co-channel station proposed to be located such that less than 50% overlap exists between the reliable service contour of the proposed facility and the reliable service contour of the applicant's existing co-channel facility (when the proposed co-channel facility would be considered an additional channel at the proposed location). Under Telocator's proposal, we should not requre a traffic load study so long as a co-channel application proposed *any* overlap with the applicant's existing facilities. Telocator does not propose to change Section 22.16(b)(2),[8] which requires a traffic loading study for additional frequencies within a 50% overlap area of an existing station. Telocator argues that retaining that section in its current form is sufficient protection against warehousing,[9] while changing Section 22.16(e) will permit efficient system expansion in response to market forces.

15. Telocator's specific proposals for base station frequencies are as follows:

a) Telocator would permit all types of usage on two-way base transmitting facilities.

b) Telocator would maintain existing standards for interference protection for the base frequencies, regardless of the use to which the frequency is put.

c) Telocator would count all types of base facility traffic as valid in load showings, except duplicative traffic and control/repeater relay traffic.

d) Telocator proposes that both vertical and horizontal polarizations, but not both simultaneously, be permitted, and that Carey service and interference contours continue to be computed as they are at present. In addition, Telocator suggests that polarization changes to an authorized facility be made by a Form 489 notification accompanied by Schedule B of the Form 401, provided that the resulting contour or system changes qualify for Form 489 treatment.

16. Telocator's specific proposals for use of the mobile frequency as a transmitter are as follows:

a) Telocator suggests that, subject to specific conditions, fixed location mobile-frequency transmitters be employed by the associated base frequency licensee. All types of usage would be permitted.

b) Telocator proposes that fixed mobile-frequency transmitters be limited to the mobile frequency associated with the operator's licensed base station, and that such transmitters be located within the 37 dBu VHF or 39 dBu UHF Carey contour of the base station.

c) Telocator also proposes specific engineering requirements in the application process, the most significant of which are the "New Propagation Curves" that Telocator suggests for calculating mobile-frequency transmitter interference levels at the 37 or 39 dBu contour of the associated base station.

d) Telocator proposes that we grant on a developmental basis any use of the mobile-frequency transmitter at an ERP of greater than 50 watts.

17. Most commenters addressing use of the conventional mobile frequencies believe we should continue to license these frequencies in pairs while permitting licensees to deploy or resell use of their associated mobile frequencies as they wish, consistent with interference

avoidance. Three Texas companies filing jointly (A-1 Communications, Amarillo Telephone Company, and Borger Air-Page) state that demand for one-way communications has been outstripping demand for two-way communications by a factor of sixty-to-one even though cellular is not yet on line. These parties also indicate that most two-way demand is for talk-back pagers. James E. Walley d/b/a Auto Phone Company states that cellular frequencies are impracticable in irregular terrain and heavy foliage, and that use of 150 MHz and 450 MHz frequencies are important for small businesses and emergency common carrier use. BellSouth argues that the Commission must consider use of the 450 MHz band by BETRS licensees when making modifications to the Rules pertaining to this frequency band, and adds that with 100 paging frequencies available, the Commission should give priority to use by BETRS subscribers of the 450 MHz band. Hello Pager Company states that there is a much greater demand for one-way service than there is for two-way service. It also notes that a radio common carrier that gives up a mobile frequency may be foreclosed from serving new needs in the future.

18. Interelectronics Corporation states that cellular service, where reliable, provides a useful service but does not supplant established radio-telephone services. It argues that "[t]he statement that cellular radio supplants other radio-telephone use in cellular areas is one originated and fostered solely by Cellular carriers." International Mobile Machines Corporation (IMM) argues that unpairing should be limited to 150 MHz frequencies and then only to those geographic areas that reflect both a strong cellular presence and a rising market demand for one-way service. It states that the under-utilization of the conventional mobile frequency bands may not be a permanent phenomenon, and that the Commission should be cautious in formulating rules which impact new technological developments requiring two-way channels. IMM believes that advances in digital technology will result in new two-way services in urban areas, and that increased use of BETRS in rural areas, will occupy much of the 450 MHz common carrier spectrum.

19. Metromedia argues that 150 MHz and 450 MHz two-way frequencies should not be unpaired. It argues that RCCs should be permitted to use these frequencies for paging, traditional two-way, control/repeater, talk-back paging, two-way message dispatch systems, and point-to-multipoint services. Moreover, according to Metromedia, Public Land Mobile Service (PLMS) licensees should have the option of operating as either common carriers or non-common carriers. MetroNet, Inc. believes that we should retain existing bandwidth, emissions, and height-power standards and require applicants for mobile-frequency transmitters to protect the 43 dBu contours of existing channels, rather than the 39 dBu contours.

20. Mountain Tower requests that we make available the mobile channels of the 150 MHz and 450 MHz two-way frequencies for point-to-point use, and decline to permit paging on the mobile channel without obtaining the agreement of existing licensees within 150 miles. Mountain Tower also states that in its experience, frequencies over 512 MHz do not provide adequate service for paging or two-way use in rural, mountainous terrain. NYNEX Mobile argues that we should retain existing interference standards for the conventional mobile frequencies, and that we should be cautious about adopting priorities among competing proposals, because such prioritization standards are too rigid.

21. NYNEX Telephone Companies (NYNEX Companies) argue that the usefulness of the 450 MHz band for BETRS should not be destroyed by unpairing the channels. It argues that a discrete market niche for Improved Mobile Telephone Service (IMTS)[10] remains strong, particularly in rural areas. NYNEX Companies also argue that, although it supports many of the interference protection suggestions made by Telocator, Telocator does not address potential interference intermodulation problems (resulting from transmitters in close proximity) and also does not go far enough to solve interference issues which are still vulnerable under Carey methodology (such as rural radio services' use of fixed subscriber units). NYNEX Companies suggest that we require all transmitter applicants to conduct an intermodulation study for existing stations within one mile of the proposed locations. Finally, the NYNEX Companies suggest that an industry conference group should address the following issues: (1) who should correct intermodulation interference; (2) whether cooperation and frequency coordination can be employed to ameliorate interference problems in advance; (3) the requirement that applicants supply complete engineering showings that meet the spirit and not merely the letter of the regulations; and (4) improvement of down-tilt antenna techniques.

22. Pacific Bell and Nevada Bell argue that BETRS depends on paired frequencies, and that depairing could result in substantial interference to two-way mobile systems. According to Pacific Bell, in several of its two-way mobile facilities, remote receivers which pick up the weaker transmissions of mobile radiotelephones are often deployed near the borders of the service and interference contours of base station facilities. The Pacific Companies note that remote recievers are not licensed under current Commission Rules, and no data base of the locations of all such remote receivers exists.

23. Arthur K. Peters, Consulting Engineers (Peters) states that traffic on the coverage networks, which previously had significant two-way usage, has changed to one-way usage due to customer demand. Peters notes that Section 22.518 of the Rules already permits use of the mobile frequency for control purposes. Peters argues that the next step in the evolution of paging equipment will be confirmatory reverse signalling, of which talk- back paging is an early example. Peters is concerned that "hilltop" interference by both mobile and base transmitters is greater than contemplated by Carey analysis. Peters also believes that prioritization would be difficult to enforce in a meaningful way because applicants would simply apply for multiple usage authorizations, regardless of their ultimate traffic type.

24. Southwestern Bell Corporation supports Telocator's proposal, and does not believe that priority should be given to any applications for use of the coventional mobile spectrum. Texpage N.E., Inc. (Texpage), states that in rural areas, cellular is not likely to be available for some time, and that public need for two-way service must be met with the conventional two-way channels. Texpage estimates that 80% of its two-way mobile customers would not be able to justify cellular service at its current equipment costs and service rates. Texpage is concerned that full-power paging transmitters on mobile frequencies in the Dallas metro area would drastically reduce the num-

ber of channels available for two-way use in surrounding rural areas. United Communications, Inc., notes that in many markets there is a continuing need for two-way service, and that the quality of this service will be threatened by the expansion of one-way service if appropriate safeguards are not adopted.

C. Discussion

1. Licensing configuration

25. The NPRM requested comments on two licensing options (*see* paragraph 11, *supra*), so that we could consider changing conventional mobile frequency licensing from a paired to an unpaired configuration. We conclude that we should continue to license these frequencies in pairs.

26. The commenters note that in order to change licensing configuration, it would be necessary for us to consider many difficult issues that are not yet ripe for resolution. These issues include the status of existing two-way channel licensees, whether their associated mobile frequencies are in use, and the existence of held orders for two-way service. For example, the commenters argue that a radio common carrier that gives up a mobile frequency may be foreclosed from serving new two-way needs in the future and that we should be cautious in formulating rules that impact new technological developments, since underutilization of conventional mobile frequency bands for two-way service may not be a permanent situation. They also note that remote receivers are deployed near the borders of base facility reliable service areas, that use of mobile frequency transmitters would interfere with the functioning of remote receivers, and that, like mobile frequency stations, the existence of remote receivers is not included in the Commission's data base. They argue, therefore, that to change the licensing configuration, we would have to develop a data base of mobile frequencies, as well as appropriate interference criteria and enforcement mechanisms.

27. We find that unpairing the two-way mobile channels is unwieldy from both an administrative and a licensing viewpoint. Establishing a data base for mobile frequency use, for remote receivers and for changes in these factors would be a heavy burden on the Commission's resources. Flexibility in service offerings may be affected if single-channel licensees were foreclosed from offering two-way service. Finally, the commenters have convinced us that there will continue to be a need for the paired channels. Accordingly, we maintain our existing rules for the paired licensing configuration of conventional mobile frequencies.

2. Uses of Conventional Mobile Frequencies

28. In the NPRM, we proposed that licensees be permitted to deploy their spectrum capacity as they wished. We suggested that licensees "would be free, for example, to offer one or two-way service, utilize a portion of their capacity for control and other point-to-point functions, or resell some or all of their capacity to others." Commenters are unanimously in favor of this proposal.

29. Most commenters are primarily interested in one-way paging. Several radio common carriers noted that demand for paging far outstrips demand for conventional two-way service. Other commenters expect demand for talk-back or confirmatory paging to expand in the future. Some commenters suggest that (two-way) data applications may in time be found for conventional mobile frequencies. For the present, however, it appears that in urban and extended suburban areas, all or most of the traffic on two-way channels is one-way paging.

30. We have said that we do not wish to permit a *de facto* reallocation of the two-way conventional mobile channels to one-way use. (*See* paragraph 6, *supra*.) Nevertheless, it appears that the changing use of these channels, at least in urban areas, reflects new technologies and market forces to an extent not foreseen at the time we last addressed this issue. As cellular radio attracted most conventional mobile radiotelephone subscribers, it appears that no new conventional mobile subscribers took their place. At the same time, interest in paging services increased dramatically, but radio common carriers did not match this change in demand with a change from two-way channels to one-way channels. In order to change frequency authorizations from two-way channels to one-way channels, RCCs would have had to go through our application process to acquire the new one-way channels, scrap their existing UHF or VHF equipment, purchase different equipment and purchase compatible paging units for all of their subscribers to rent, or require the subscribers who wish to own their paging units to buy the new compatible units. For the wide area systems with large equipment requirements, as well as for the small businesses which may operate closer to the margin, changing frequencies would require a large capital outlay, and this has not been an acceptable alternative for the licensees. Finally, our Rules have permitted the expansion of one-way service on two-way channels because we have required only that two-way service be made available on these channels, and have not placed limitations on the amount of paging service that could be offered.

31. While we acknowledge these economic forces, we remain concerned that valuable spectrum, *i.e.*, the mobile half of two-way channels, largely is lying fallow in urban areas. Many commenters remark, however, that expanded use options for the two-way channels would allow them to respond to market demand more efficiently, and that it is likely new two-way technologies will be developed in the near future. For example, IMM notes that digital technology, which needs two-way channels, may have applications in urban areas. In addition, commenters believe that confirmatory paging[11] will become a larger component of their service offerings. Accordingly, it appears that the future prospects for more complete utilization of mobile frequencies are very good, even without separate use of mobile frequency transmitters.

32. Separate use of mobile frequency transmitters by licensees of the associated base stations is a very appealing, although partial, solution to unoccupied mobile frequencies. We appreciate Telocator's proposal which would make such use possible. However, Telocator's proposal shows that in order to avoid interference with co-channel two-way services, we would have to impose very restrictive power levels. Consequently, it is not likely that extensive use could be made of mobile frequency transmissions. Since it appears that the administrative burden on this Commission to implement such rules would be far greater than the usefulness to the public of the transmitters, we decline to promulgate rules permitting mobile frequency transmitters at this time. However, existing licensees who believe that mobile frequency transmitters would be fea-

sible in their service areas may file applications for developmental authorization following the technical proposal of Telocator in this proceeding. We will consider any such applications on a case-by-case basis.

33. We find, on balance, that it is preferable to permit the marketplace to determine which common carrier services will be offered on the conventional two-way mobile frequencies, rather than to specify permitted uses over these channels, which specifications may unnecessarily restrict the introduction of new kinds of common carrier services.[12] Accordingly, we amend our rules to permit licensees of two-way common carrier channels to offer any type of mobile two-way or one-way common carrier services, to use their channel capacity for common carrier control or any other common carrier point-to-point function, and to resell their channel capacity for mobile common carrier uses.[13] The one-way functions may be offered on either the base or the mobile channel, however, use of mobile transmitters (other than mobile units and rural radio services) will be only on a developmental basis.

34. We believe that as developed in this Order, the term "flexible allocation" does not describe a situation in which different service categories must compete for the same frequencies.[14] Rather, it is descriptive of the fact that mobile common carrier frequency allocations are now available for a variety of common carrier services involving one or two-way communications between a base station and mobile units as well as for developmental use of fixed mobile transmitters, and that the types of such services to be offered need not be specified by regulation. We believe this is well in keeping with our statutory mandate. The provisions of 47 U.S.C. Sections 303 (a) - (c) give the Commission full authority to classify radio stations and to prescribe the nature of the service each class shall render.[15]

35. Here, we hold that mobile commercial service is one classification, and we find that it is not just or reasonable to subdivide the class into categories based on technological description or consumer application (*e.g.*, tone-only paging, digital paging, alpha-numeric paging, confirmatory paging, car radiotelephone, portable radiotelephone, data transmission, etc.). We remain within the parameters of the Communications Act by our instant action permitting flexible choice of service offerings within the class of stations identified as mobile common carrier.[16]

3. Technical Requirements

36. In order to accommodate varying mobile uses on the conventional mobile frequencies, we find that it is necessary to standardize bandwidth, emissions, height/power limitations, and the dBu level of service contours (*i.e.*, 37 dBu for UHF frequency transmitters, and 39 dBu for VHF frequency transmitters). In the NPRM, we proposed that the existing technical parameters would remain in force, and that the Carey Report would continue to be used. Most commenters agree that it would be best to continue the existing technical limitations notwithstanding the type of service to be offered. For example, the service contours for one-way paging frequencies are 43 dBu because paging units have a shorter receiving range than do mobile telephone units. However, if we were to diminish the service contours of two-way conventional mobile station presently offering only one-way services, that station may be hindered in offering two-way telephone service (or other two-way technology) in the future. Accordingly, technical standards for conventional mobile frequencies will remain the same.

4. Traffic Loading Requirements for Additional Channels

37. In the NPRM, we requested comments on whether need standards should be implemented which take both base frequency traffic and mobile frequency traffic into account. Under such standards, we stated that a vacant mobile channel on a two-way system would bar license of additional two-way channels. In general, commenters opposed any overview of the traffic on mobile frequency channels.

38. In our view, based on our observation of the industry and on statements made by commenters, there is a strong possibility that two-way digital, data applications, and confirmatory paging services will increase in the near future. These observations alleviate our initial concerns, expressed in the NPRM, that many of the mobile channels of two-way paired frequencies in the conventional mobile spectrum are underutilized. Accordingly, we will count both one-way and two-way traffic on the base half of paired channels towards the threshold blocking level required to justify an additional channel. However, developmental use of mobile frequencies will not be a basis for additional two-way channels, because we believe that the base frequency should remain the benchmark for whether additional channels are justified, and control, repeater, and duplicative traffic will not be counted towards the blocking level required to justify an additional channel because such traffic merely duplicates subscriber uses.[17]

39. Telocator suggested that instead of defining "fill-in" transmitters as those proposing co-channel operation with proposed service contours encompassing 50% or more of the existing station service contours, *see* paragraph 14, *supra*, fill-in transmitters should be defined as co-channel applications proposing *any* overlap with existing station service contours. Telocator appears to indicate that our licensees are creating wide-area systems, without making traffic load showings, through reliance on Section 22.16(e). The "fill-in" provision for conventional mobile service is designed to permit "dark area" coverage for licensees whose 39 or 37 dBu Carey contour service area cannot be covered due to irregular terrain or other obstacles. The "fill-in" rule is not intended, nor do we intend, to permit "creeping" system expansion and the avoidance of traffic load showings. The rule specifically states that "fill-in" applications must be filed using non-fill-in stations' service contours towards the required 50% overlap. Because Telocator's proposal would encourage such unwarranted expansions of systems, we are denying Telocator's request that Section 22.16(e) be amended to expand the definition of "fill-in" transmitters. Moreover, we amend Section 22.16(e) to require applicants for "fill-in" transmitters to certify in their applications that the service contours upon which they rely for the 50% overlap requirement do not include service contours of existing or authorized "fill-in" transmitters.[18]

5. Service-Based Priorities Among Mutually Exclusive Applications

40. In the NPRM, we requested comments on whether we should implement standards for priorities among competing proposals. Most commenters opposed the idea; one commenter pointed out that applicants would simply re-

quest multiple uses for their channels and so circumvent any prioritization. A few commenters are in favor of giving priority to BETRS applicants.

41. There appears to be little justification on the record for prioritizing different uses of conventional mobile two-way frequencies. We can find only one exception to this general statement, and that is the situation involving BETRS where this service is the most efficient and cost effective way in which basic telephone service can be received by individuals and businesses who want to subscribe. If it can make this showing in its application, the BETRS applicant may request a comparative hearing under the waiver provisions of Section 22.19. Because we expect that this situation will occur infrequently, we find that it is not necessary to make rule amendments to codify this option for BETRS applicants.

II. NATIONWIDE PAGING FREQUENCIES

A. Background

42. In our *First Report and Order*, Gen. Docket No.80-183, 89 F.C.C.2d 1337 (1982), we set aside three frequencies in the 900 MHz paging allocation to be used for intercity paging on a nationwide scope. We further refined our plan for nationwide paging in the *Memorandum Opinion and Order on Reconsideration (Part 2)* 93 F.C.C.2d 908 (1983). In that order, we decided that three network organizers would be licensed one frequency each, and that intercity paging services would be retailed through local outlets. In addition, we noted that:

> [n]one of the petitioners requested that we allow local paging on the network frequencies and we continue to believe that local use of these frequencies, could stifle their development for network use at least in the initial period of development. . . . Nevertheless, *once the network frequencies are licensed and in operation, economic or operational efficiency may militate in favor of loosening the absolute prohibition against local service*. We will entertain requests from the three network licensees to provide local paging as long as it can be offered without displacing or otherwise reducing the quality of service to nationwide customers. (Emphasis supplied.) *Id.* n.8, p. 913.

43. In the *Third Report and Order*, 97 F.C.C.2d 900 (1984), we ruled that the three network organizer frequencies would be granted through random selection procedures. Of sixteen applications filed, the first three chosen pursuant to our random selection procedures were members of settlement groups. On August 8, 1985, we awarded authorizations to the surviving applicants: National Satellite Paging, Inc. (NSP), Nationwide Paging Network (Contemporary), and CyberTel BeepUSA Nationwide Paging Limited Partnership (CyberTel). We required grantees to establish their systems within each of a minimum of fifteen standard metropolitan statistical areas within one year of grant, and to offer service on a nationwide level within two years of the date of grant.

44. NSP met its one- and two-year construction requirements. Contemporary requested and was granted a six-month extension, and it met its new construction deadlines. CyberTel requested an indefinite extension of time to construct its initial system. This request was denied upon a finding that the delays were due to business decisions, not causes beyond CyberTel's control. In addition, NSP requested authority to offer local paging in conjunction with its network paging. NSP's request to offer local paging was ultimately granted upon a finding that it met the criteria set out in the *Reconsideration Order (Part 2)*, *see* paragraph 42, *supra*.

45. In the years since we determined that allocation of three nationwide paging channels were required, some new technologies and new uses for existing technologies have created *de facto* nationwide paging systems from individual stations (generally by connecting them to satellite relays). In addition, expanded paging systems cover large regions, giving many subscribers inter-city paging as well as local paging in their regions. Consequently, the total current demand for nationwide paging as a separate service is difficult to estimate. It appears that few subscribers wish to carry two pagers - one local and one nationwide - when *de facto* nationwide paging exists through the local paging service provider. These developments, when combined with NSP's statements indicating it must provide local paging in order to meet its competition, and CyberTel's decision not to construct, raised some doubts concerning the continued public need for the third nationwide paging frequency yeilded by CyberTel.

46. Accordingly, in the NPRM, we requested public comment on the possiblity of allowing unrestricted local paging by the nationwide network licensees.[19] We also proposed that the third frequency be removed from nationwide paging, and instead be included in Section 501(g)(1) for multiple-address one-way signalling systems. We requested parties to comment on the relative public demand for frequencies under 501(g)(1) and network paging frequencies.

B. Positions of the Parties

47. Parties arguing that the nationwide frequency should be reallocated include A-1, Amarillo, and Borger (filing jointly), American Mobilphone, Gencom, Metromedia, and MetroNet, Inc. Parties opposed to unrestricted local paging by nationwide frequency licensees include A-1, Amarillo, and Borger (filing jointly), Able, GTE, American Mobilphone, Cincinnati Bell, Contemporary Group, Hello Pager Co., NYNEX, and Telocator.

48. Parties arguing that we should re-open the third nationwide paging frequency for applications include GTE, Contemporary Group, McCaw, Metriplex, NYNEX, and Telocator. MCCA argues that the third frequency should be available only to the existing nationwide paging licensees.

49. No party offers an estimate of the public demand for nationwide paging, nor does any party suggest the level of public need existing for multiple-address control frequencies. Parties concerned about unrestricted local paging by the network organizers cite competition to local carriers and the necessity to acquire State regulatory authorization. Parties arguing that the third nationwide paging frequency should be reopened for applications indicate that the existence of applications will prove the need for another nationwide paging channel. In addition, some parties cite the technological infeasibility of using the extant nationwide paging frequency for multiple address one-way systems. Parties arguing that the frequency should be reallocated do not address the potential

intermodulation problem, nor do they provide an indication of the extent of need for the frequency for this purpose.

C. Discussion

50. Because some entities appear to be interested in applying for and using the unassigned nationwide paging frequency, we have decided to defer, for the time being, our proposal to reallocate the channel. Instead, in an effort to foster additional competition in the nationwide paging market, we will reopen the remaining nationwide paging frequency for applications.[20] A public notice will be issued shortly setting forth our procedures. In order to ensure that all nationwide paging systems operate under the same rules, applicants for this frequency must propose a one-way communications service that can be used on an intercity, nationwide basis. We will continue to require that any local use of the nationwide frequency may not interfere with provision of inter-city, nationwide service. However, we will remove the restriction that the licensee must be "in operation" on a nationwide basis before incidental local service can be offered. In the interest of fair and equitable treatment for members of the same class of license, this policy of increased flexibility is also applicable to the two existing nationwide paging frequency licensees.

51. We will not specify the type of service nor the technical requirements. Nevertheless, applicants must show technical feasibility and comply with Part 22 of our Rules. In addition, we will retain the requirement that the license will be conditioned on service commencement in 15 statistical metropolitan areas within one year of authorization, and on nationwide service being available two years from authorization.[21]

III. REGULATORY FLEXIBILITY ACT - FINAL ANALYSIS

52. *Reason for action and objectives.* The Rule Making action will facilitate availability of frequencies for a wide variety of commercial uses without the need for the Commission to hold new Rule Making proceedings as technology and marketplace demand change. At the same time, the action is intended to ensure that all spectrum licensed to mobile common carrier entities is utilized to serve the public's communication's needs.

53. *Specific alternatives which could accomplish the same objectives.* We have determined no specific alternatives which could accomplish the objectives achieved in this Rule Making order.

54. *Issues raised by the public in response to the initial analysis.* The comments raised by parties have been addressed herein. In addition, several Members of Congress have expressed support for the flexible allocation of conventional mobile frequencies.

IV. ORDERING CLAUSES

55. WHEREFORE, for the foregoing reasons, Part 22 of the Commission's Rules IS HEREBY AMENDED as discussed herein and as shown in Appendix 2 below;

56. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE **March 24, 1989.**

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX 1

PARTIES COMMENTING IN CC DOCKET 87-120

COMMENTS

A-1 Communications, Inc.,
Amarillo Telephone Company,
Borger Air-Page, Inc.
Bell Atlantic Telephone Companies
Bell South Corporation
City of Glendale, California
Mobile Communications Corporation of America
Metromedia Company
Able Communications
GTE Airfone Incorporated
Alltel Mobile Communications, Inc.
American Mobilphone, Inc.
Ameritech Mobile Services, Inc.
American Petroleum Institute
American SMR Network Association, Inc.
James E. Wiley, d/b/a Auto Phone Company
Bell Communications, Inc.
Cincinnati Bell Telephone Co.
East Ascension Telephone Company
Gencom Incorporated
Hello Pager Company
Hendrix Radio Communications, Inc.
Dean George Hill, P.C. Law Offices
Interelections Corporation
International Mobile Machines Corp.
International Muncipal Signal Assoc. &
The International Association of Fire
Chiefs, Inc.
McCaw Communications Companies, Inc.
Mobile Communications Corporation of America
MetroNet, Inc.
Metropolitan Mobile Telephone Company, Inc.
Mobilecomm of Los Angeles, Inc.
Mountain Tower
NYNEX Mobile Communications Company, Inc.
NYNEX Telephone Companies
Pacific Bell and Nevada Bell
Arthur K. Peters, Consulting Engineers
Robert L. Mohr d/b/a/ Radiocall Corporation
Southwestern Bell Corporation
Special Industrial Radio Service Association, Inc.
Texpage N.E., Inc.
United Communications, Inc.

Utilities Telecommunications Council

REPLY COMMENTS

American SMR Network Association, Inc.
Bell Atlantic Telephone Companies
BellSouth Corporation
Contemporary Group
Gencom Incorporated
International Mobile Machines Corp.
Mobile Communications Corporation of America
Metromedia Paging Services, Inc.
Motorola, Inc.
NYNEX Telephone Companies
(New York Telco & New England Telco)
Pagex
Arthur K. Peters, Consulting Engineers
Southwestern Bell

APPENDIX 2

RULES SECTION

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.501 is amended by revising paragraph (b) as follows:

Section 22.501 Frequencies

* * * * *

(b) The following base and mobile channel frequencies may be assigned on a paired basis to communications common carriers for the following services: (i) any two-way public land mobile service; (ii) any one-way public land mobile service; (iii) control or repeater stations or other point-to-point common carrier functions. All use must conform to the interference, bandwidth and emissions standards of this Part for these frequencies.

Base station frequencies (MHz):	Mobile dispatch, and auxiliary test station frequencies (MHz)
152.03	158.49
152.06	158.52
152.09	158.55
152.12	158.58
152.15	158.61
152.18	158.64
152.21	158.67
152.51*	157.77*
152.54*	157.80*
152.57*	157.83*
152.60*	157.86*
152.63*	157.89*
152.66*	157.92*
152.69*	157.95*
152.72*	157.98*
152.75*	158.01*
152.78*	158.04*
152.81*	158.07*
454.025	459.025
454.050	459.050
454.075	459.075
454.100	459.100
454.125	459.125
454.150	459.150
454.175	459.175
454.200	459.200
454.225	459.225
454.250	459.250
454.275	459.275
454.300	459.300
454.325	459.325
454.350	459.350
454.375*	459.375*
454.400*	459.400*
454.425*	459.425*
454.450*	459.450*
454.475*	459.475*
454.500*	459.500*
454.525*	459.525*
454.550*	459.550*
454.575*	459.575*
454.600*	459.600*
454.625*	459.625*
454.650*	459.650*

* * * * *

3. Section 22.16 is amended by revising paragraph (e) as follows: 22.16 Objective Need Standards

* * * * *

(e) An application for an additional location on the same frequency as an authorized station will be considered as a "fill-in", and no loading study will be needed, if the reliable service area contour of the proposed transmitter is at least 50% encompassed by the reliable service area contour of another non "fill-in" transmitter(s) on the same frequency. Applicants relying on this subsection must provide the following statement in their application:

"I hereby certify that this application for a "fill-in" transmitter, filed pursuant to Section 22.16(e), relies solely on the reliable service area contour(s) of non-"fill-in" transmitter(s) as the basis for the 50% service area overlap requirement of Section 22.16(e)."

FOOTNOTES

[1] Under some circumstances, the base frequency may be used to transmit to fixed locations, and the fixed locations may transmit to the base station on the mobile frequencies. This arrangement is used in Rural Radio Service and Offshore Radio Service.

[2] *1983 Order*, 95 F.C.C.2d at 822.

[3] Public Notice Mimeo No. 5785, "Requirements to Provide Paging on Two-way Channels in Common Carrier Land Mobile Service."

[4] Section 22.501(l) of the Rules currently permits mobile channels to be used as repeater station frequencies on a secondary basis.

[5] In the *1983 Order*, *supra*, at 823, we stated that the requirement that two-way service is "offered" means that the carrier must be able to serve the two-way customer upon request. Thus, two-way equipment and interconnection must be in place to meet this requirement.

[6] FCC Report No. 4-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service," by Roger B. Carey.

[7] Section 22.16(e) of the Commission's Rules currently states:

> An application for an additional location on the same frequency as an authorized station will be considered as a 'fill-in', and no loading study will be needed, if the reliable service area contour of the proposed transmitter is at least 50% encompassed by the reliable service area contour of another non-'fill-in' transmitter(s) on the same frequency.

Telocator proposes that if *any* overlap with co-channel facilities exists, we should treat the proposed facility as a "fill-in" and not require a load showing.

[8] Section 22.16(b)(2) currently provides that:

> Applications for more than one channel on a new two-way system, up to a maximum of four channels, will be granted as follows . . . . If the proposed service area and type of service are not substantially the same as those existing, the channels requested will be treated as new rather than as additional channels. Applications are considered to be requesting initial channels if less than 50% if the proposed reliable service area contour overlaps an existing contour, or if the proposed service area contour includes a major market area not included within the existing contour.

[9] The term "warehousing" refers to the practice of applying for and holding one or more frequencies which are not used or for which there is no demand.

[10] IMTS is automatic-dial, conventional mobile telephone service. It was named "improved" because it removed the need for subscribers to go through switchboard operators. There is little, if any, old-style manual mobile telephone service left in operation.

[11] Confirmatory paging is a two-way paging service which is designed to signal the base station that a paging unit has received a page.

[12] The NPRM did not propose, and we do not find, that licensees of frequencies with an asterisk in Section 22.501(b) should be excused from making channel space available for rural radio service to those who request it. Accordingly, we retain that requirement.

[13] We emphasize that the conventional mobile channels of Part 22 of our Rules, which are at issue herein, will remain within the common carrier service. We did not propose to change the service and eligibility standards which applicants and licensees are required to meet in order to become, or remain, grantees under that Part. Our legal findings herein should ameliorate the concerns expressed in Commissioner Quello's separate statement to the NPRM.

[14] Thus, we do not fall within any proscription of "allocation of spectrum by lottery" as described in the following quote from the Senate Report No. 99-301, 99th Congress, 2d Session (May 15, 1986) at p. 34, which states:

> [T]he Commission's proposal in general docket No. 84-1231 that applicants for different services, such as the private land mobile radio service and the cellular radio service, compete for the same spectrum under a system of random selection amounts to the allocation of spectrum by lottery and is not authorized by law. The Communications Act requires the Commission to award spectrum by making discrete allocations of spectrum to each service as the public interest requires.

[15] In addition, 47 U.S.C. 157(a) provides that "[i]t shall be the policy of the United States to encourage the provision of new technologies and services to the public. . . ." In this section of the Communications Act, we are enjoined to consider expeditiously petitions or applications for a new technology or service. In our decision herein, we permit new services and new technologies to be offered in the context of existing regulatory parameters (such as interference limitations and eligibility standards for the mobile common carrier licensees) without delay. By doing so, we protect the public interest in the orderly licensing of radio common carriers and the quality of commercial mobile radio services. In addition, while we permit mobile common carriers to implement a variety of services and sell capacity on their channels, the use of their channels is subject to State regulatory authority.

[16] In the event of mutual exclusivity among these common carrier applications, the preferred method for resolving the conflicts will be lottery pursuant to Section 22.33 of our Rules.

[17] Rules pertaining to one-way frequency channels (*e.g.*, Section 22.19(c) of the Rules) will not apply to two-way frequency channels regardless of the use to which the latter are put.

[18] This modification does not make a substantive change in our rules. It is merely a proceedural rule and as such is not subject to the notice and comment requirements of the Administrative Procedure Act.

[19] Licensees are currently restricted by the provisions that local paging may not be offered until their systems are in nationwide operation, and that local paging may not interfere with use of their nationwide systems by intercity traffic. *See* paragraphs 42 - 43, *supra*.

[20] When we decided to allocate the three 900 MHz network frequencies to nationwide paging, we indicated that our purpose was to establish three network channels with each licensed to a different common carrier. *Reconsideration Order (Part 2)*, 93 F.C.C.2d at 914-15; *see also Third Report and Order*, 97 F.C.C.2d at 910-11. Under this regulatory structure, each licensee would "be responsible for organizaing each network and detailing the legal and financial arrangementws and technical parameters of the system." *Reconsideration Order (Part 2)*, *supra* at 914. It was our hope that this regulatory approach would "foster technically diverse, competitive networks to the benefit of the public." *Id.* We see no reason to deviate from this regulatory structure at this time. Accordingly, when we reopen the remaining frequency for applications, existing nationwide paging organizers will not be eligible to apply. Further, in order to ensure the

complete independence of each network organizer, the existing network organizers may not hold a cognizable interest in any applicant or settlement group for the frequency.

[21] The standard for fulfilling our requirement that service be on a "nationwide" level has not been defined in any of our previous orders. At their initial "nationwide" level of operation, the current nationwide paging licensees were providing service in approximately 25 of the top 40 MSAs. Each has continued to expand around the large MSAs and also into new areas. Different types of one-way services may have somewhat different definitions of what constitutes service on a nationwide level. Rather than specifying a minimum definition of "nationwide", we prefer to maintain oversight of the future licensee to ensure that it is meeting the terms of its license.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 89-16

In the Matter of

Amendment of the Frequency Allocation and Aviation Services Rules (Parts 2 and 87) to provide frequencies for use by commercial space launch vehicles. RM-6423

NOTICE OF PROPOSED RULE MAKING

Adopted: January 30, 1989; Released: February 16, 1989

By the Commission:

I. INTRODUCTION

1. This Notice of Proposed Rule Making proposes to amend Parts 2 and 87 of our Rules, 47 C.F.R. Parts 2 and 87, to permit non-Government[1] entities to use frequencies in the 2310-2390 MHz band for telemetry communications with fully operational space launch vehicles.[2] Frequencies in this band are currently available only for flight test telemetry. We are initiating this rule making in response to a petition (RM-6423) filed by the Aerospace & Flight Test Radio Coordinating Council (AFTRCC).[3]

II. BACKGROUND

2. Both Government and non-Government entities are engaged in the development and testing of missiles or booster rockets (launch vehicles). Until recently the National Aeronautics and Space Administration (NASA) was the Government agency responsible for launching non-Government payloads into space. Non-Government entities wanting to launch a satellite or other payload had to go through NASA to obtain the appropriate launch vehicle and facilities. In 1986, however, the President announced that NASA will no longer be launching non-Government satellites. *See* AFTRCC petition at 5. Under the Presidential directive, responsibility for providing launch vehicles for non-Government payloads has been transferred to the private sector. Government agencies were asked to facilitate this transfer by eliminating regulations that would impede non-Government space activities. The Presidential Directive on National Space Policy provides that the Government shall purchase commercially available space goods and services to the fullest extent feasible.[4]

3. The launching of satellites or other payloads is a very complicated operation. Launch vehicles are comprised of a large number of components that must function with great precision under severe environmental conditions. An equipment malfunction, even in a small component, can lead to total disaster resulting in the loss of millions of dollars. To reduce the chances of equipment malfunctioning, spectrum was allocated to permit the transmission of diagnostic data (*i.e.*, telemetry) during flight. Builders and users of launch vehicles could then use this telemetry capability to identify problem areas and improve performance.

4. In the United States the 1435-1535 MHz and 2310-2390 MHz bands are allocated for shared use by Government and non-Government entities for diagnostic telemetry[5] during flight testing.[6] These frequencies are only available for test flights and cannot be used for the transmission of diagnostic telemetry data to evaluate the flight performance of fully operational launch vehicles. Frequencies in the 2200-2290 MHz band are allocated for the purpose of monitoring fully operational launch vehicles. Unlike frequencies in the 1435-1535 MHz and 2310-2390 MHz bands, however, these frequencies are allocated exclusively for Government use. The frequencies were not made available to non-Government entities because in the past the private sector has not owned or controlled fully operational launch vehicles.

III. PETITION

5. AFTRCC's petition asks us to allow the use of six frequencies in the 2310-2390 MHz band by non-Government entities for telemetry transmission during the development (testing) stage and once the launch vehicles become fully operational. In support of its petition, AFTRCC states that the Office of the Commercial Space Transportation of the United States Department of Transportation (DOT) is responsible for administering the Government program in support of non-Government expendable launch vehicles (ELVs).[7] In adopting licensing regulations for non-Government launch activities, AFTRCC notes that DOT stressed that one of its major goals has been to encourage and promote the industry through carefully considered policies and procedures designed to eliminate, wherever possible, regulatory uncertainties.[8] Furthermore, AFTRCC points out that the Presidential Directive on National Space Policy, *supra*, calls upon the Government to identify and eliminate or propose for elimination applicable portions of United States laws and regulations that unnecessarily impede non-Government space sector activities. AFTRCC petition at 5 and 6. AFTRCC states that it is important to resolve promptly any regulatory uncertainties, such as the availability of telemetry spectrum, in view of the enormous commitment of funds to be made by private sector ELV participants. *See* AFTRCC petition at 6 and 7.

6. Concerning telemetry spectrum, AFTRCC states that during the spring of 1987 it came to its attention that the National Telecommunications and Information Administration's (NTIA) Interdepartment Radio Advisory Committee (IRAC) questioned whether frequencies in the 2310-2390 MHz band could be used to transmit telemetry data for non-Government ELVs. *See* AFTRCC petition at 2 and 3 and Attachments A and B. To answer this question, AFTRCC requested an opinion from our Office of Engineering and Technology (OET). OET concluded that frequencies in the 2310-2390 MHz band could be used for telemetry from commercial ELVs for flight test purposes. It questioned, however, whether our Rules currently allow these frequencies to be used for telemetry transmissions once the commercial ELV program becomes fully operational. NTIA indicated that frequencies in the 2200-2290 MHz band, the band currently available for

telemetry support of fully operational ELVs, were heavily used by the Federal Government and, therefore, could not be used by non-Government entities. To resolve the problem, NTIA, with the advice of the IRAC, identified six frequencies in the 2310-2390 MHz band suitable for telemetry support of fully operational commercial ELVs.[9]

7. In view of the foregoing, AFTRCC asks us to amend Footnote US276 to the Table of Frequency Allocations contained in Section 2.106 of our Rules, 47 C.F.R. § 2.106, as well as Section 87.301(d)(1), 47 C.F.R. § 87.301(d)(1), to allow non-Government entities to use frequencies 2312.500 MHz, 2332.500 MHz, 2352.500 MHz, 2364.500 MHz, 2370.500 MHz and 2382.500 MHz for telemetry transmissions associated with fully operational ELVs. No comments were filed in response to AFTRCC's petition.

IV. DISCUSSION

8. As discussed above, the President has stated that NASA will no longer provide launch vehicles for non-Government payloads. Responsibility for this function is being transferred to the private sector. To facilitate the transfer, the President has asked that all Government agencies eliminate regulations that would impede non-Government space activities.

9. The frequencies currently available to non-Government entities for the transmission of inflight diagnostic telemetry are limited to test flights. Although there is sufficient confidence in their capabilities when research and development tests are completed, launch vehicle design is continuously being modified to improve operational performance. In most cases telemetry data transmitted during the flight of fully operational launch vehicles is the only means available to determine component performance or, in case of malfunction, what caused the malfunction. There are no frequencies available to the private sector, however, for telemetry transmissions in fully operational ELVs. This capability is an absolute necessity in this industry, especially if the U.S. private sector is to compete in the world market for launch vehicles.

10. AFTRCC has requested the use of six frequencies for telemetry operations in fully operational ELVs, frequencies that are currently used for test flight telemetry operations. NTIA and IRAC have given their support to AFTRCC's request. In view of the President's directive, the support of NTIA and IRAC, and need for a telemetry capability in all phases (development and operational) of ELV operation, we propose to amend Footnote US276 to the Table of Frequency Allocations contained in Section 2.106 of our Rules, 47 C.F.R. § 2.106, as well as Section 87.301(d)(1), 47 C.F.R. § 87.301(d)(1), to allow non-Government entities to use frequencies 2312.500 MHz, 2332.500 MHz, 2352.500 MHz, 2364.500 MHz, 2370.500 MHz and 2382.500 MHz for telemetry transmissions in fully operational ELVs. The availability of these frequencies for this use would serve the public interest by providing telemetry capabilities critical to the development of the private launch vehicle industry.

11. Finally, although AFTRCC's petition referred only to telemetry transmissions for ELV's, a similar need may also exist in the future for telemetry capabilities for fully operational re-usable launch vehicles (RLVs).[10] The purpose and use of RLVs appear to be identical to ELVs, while in some cases offering a potentially more economical alternative. We therefore also request comment on the advisability of amending our Rules to allow telemetry transmission for fully operational RLVs on the same frequencies.

VI. ADMINISTRATIVE

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. *See* 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. *See* 47 C.F.R. § 1.1203.

13. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. *See* 47 C.F.R. § 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See* 47 C.F.R. § 1.1206.

14. Authority for issuance of this *Notice* is contained in Sections 4(i), 303(g) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g) and (r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules (47 C.F.R. §§ 1.415 and 1.419) interested parties may file comments on or before **April 17, 1989** and reply comments on or before **May 17, 1989.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection dur-

ing regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554.

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the burden hours imposed on the public.

16. The Commission hereby certifies pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. Although these proposed changes allow the aerospace community greater flexibility in the operation of launch vehicles and result in some expenditures for equipment, these additional, optional expenditures should be minimal.

17. IT IS ORDERED that a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Proposed Rules

Parts 2 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

A. Part 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS.

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY; Sec. 4, 302, 303, 307, 48. Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. In Section 2.106 footnote US276 is proposed to be revised to read as follows:

§ 2. 106 Table of frequency allocations.

* * * * *

US276 Except as otherwise provided for herein, use of the band 2310-2390 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles, or major components thereof. The following six frequencies are shared on a co-equal basis for telemetering and associated telecommand operations of expendable launch vehicles whether or not such operations involve flight testing: 2312.5, 2332.5, 2352.5, 2364.5, 2370.5 and 2382.5 MHz. All other mobile telemetering uses shall be secondary to the above uses.

* * * * *

B. Part 87 - AVIATION SERVICES

1. The authority for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. Section 87.5 is proposed to be amended by adding after "Emergency locator transmitter (ELT) test station" a new definition for "Expendable Launch Vehicle" to read as follows:

§ 87.5 Definitions.

* * * * *

Expendable Launch Vehicle (ELV). A booster rocket that can be used only once to launch a payload, such as a missile or space vehicle.

* * * * *

3. In Section 87.303, paragraph (d)(1) is proposed to be revised to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435-1535 and 2310-2390 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major components. Permissible uses include telemetry and telecommand transmissions associated with the launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned or unmanned objects undergoing flight tests. In the 1435-1535 MHz band, the following frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the 2310-2390 MHz band, the following frequencies may be assigned on a co-equal basis for telemetering and associated telecommand operations of expendable launch vehicles whether or not such operations involve flight testing: 2312.5, 2332.5, 2352.5, 2364.5, 2370.5 and 2382.5 MHz. In the 2310-2390 MHz band, all other telemetry and telecommand uses are secondary. The Maritime Mobile-Satellite Service will be the only service in the 1530-1535 MHz band after January 1, 1990.

* * * * *

FOOTNOTES

[1] For the purpose of this proceeding the term "non-Government" applies to those private sector entities involved in the development, manufacture or operation of launch vehicles or associated major components for commercial purposes.

[2] A launch vehicle is a booster rocket that can be used to launch a payload, such as a missile or space vehicle.

[3] AFTRCC is a trade association of major commercial entities engaged in the design and manufacturing of Government and non-Government aircraft, space vehicles, and their major components. AFTRCC is recognized by this Commission as the frequency coordinating committee for non-Government flight test telemetry station assignment. *See* Report and Order, Docket No. 18234, 15 FCC 2d 831 (1969).

[4] *See* The White House, Office of the Press Secretary Fact Sheet, "Presidential Directive on National Space Policy," dated February 11, 1988.

[5] Additionally, the frequencies in the 1435-1535 MHz and 2310-2390 MHz bands are used to transmit telecommands that are directly associated with the support of the telemetering functions authorized in these bands.

[6] Telemetry transmissions in these bands must be associated directly with the launching into space, reentry into the earth's atmosphere, and incidental orbiting prior to reentry of manned or unmanned objects, undergoing flight tests. *See* 47 C.F.R. § 87.303(d)(1).

[7] An expendable launch vehicle can be used only once to launch a payload, such as a missile or space vehicle.

[8] *See* Commercial Space Transportation; Licensing Regulations, 53 FR 11004, 11008 (April 4, 1988).

[9] *See* letter from Mr. William D. Gamble, Deputy Associate Administrator, of the Office of Spectrum Management, of the National Telecommunications and Information Administration (NTIA), of the United States Department of Commerce, to Mr. Jack Parker, of AFTRCC, dated December 9, 1987.

[10] A re-usable launch vehicle is a booster rocket that can be recovered after launch, refurbished, and re-launched.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Maritime
Services Rules to Permit
Additional Use of VTS Channels
in the Port Areas of New York
and New Orleans

ORDER

Adopted: January 27, 1989; Released: February 15, 1989

By the Commission:

I. INTRODUCTION

1. Effective July 30, 1988, the United States Coast Guard (Coast Guard) discontinued its Vessel Traffic Services (VTS) operations in the port areas of New York, NY, and New Orleans, LA.[1] This action leaves certain marine frequencies designated in Section 80.383 of the Commission's Rules, 47 C.F.R. § 80.383, in these two port areas, unused. This Order amends Section 80.383 to allow use of those frequencies in these two port areas by eligible users for other than VTS operations, pending possible future use for VTS communications.

II. BACKGROUND

2. Essentially, VTS systems are ship movement reporting systems designed to prevent damage to ships, bridges, and other structures in United States navigable waters. VTS systems also are intended to reduce environmental damage associated with navigational accidents. The Coast Guard requires that certain large ships, tow and tug boats, dredges, and floating platforms participate in VTS systems.

3. In 1975, at the Coast Guard's request, the Commission amended its Rules to make frequencies available for exclusive VTS use within designated VTS radio protection areas.[2] Currently, Section 80.383 makes up to four maritime channels available for VTS communications. The following VTS frequencies are designated for the port areas of New York and New Orleans:

156.550 MHz [channel 11]
156.600 MHz [channel 12]
156.700 MHz [channel 14]

Prior to the Commission's 1975 VTS *Report and Order*, channel 11 was authorized for commercial communications and channels 12 and 14 were authorized for port operations communications nationwide. These provisions still pertain to the channels when they are used outside of a designated VTS radio protection area.

III. DECISION

4. Allowing these frequencies to be used for other purposes instead of remaining idle would increase spectrum efficiency and help satisfy the demand for maritime frequencies in these two port areas. Therefore, we are amending Section 80.383 to allow eligible users to be licensed on channels 11 and 14 in the New York VTS radio protection area and channels 11, 12, and 14 in the New Orleans VTS radio protection area. Channel 11 is designated for commercial communications and channels 12 and 14 for port operations communications.[3]

5. The Coast Guard has indicated that its need for channel 12 in the New York VTS area for anchorage management services will continue despite the closing of the New York VTS system.[4] Therefore, we are not making channel 12 available for port operations communications in the port area of New York.

6. Because the Coast Guard has acted due to budgetary constraints, reestablishment of the two VTS systems is a possiblility. Thus, licenses for coast stations under this Order will be granted only on a provisional basis, contingent on a continuation of current Coast Guard policy. The Commission may require operations pursuant to such conditional licenses to cease upon notification to the licensee, or may choose not to renew such conditional licenses, if VTS systems for the port areas of New York or New Orleans are reestablished.

7. This action permits greater use of the maritime VHF spectrum in two busy port areas and has the Coast Guard's support. Because the use of this spectrum promotes safety and provides other public benefits, we find that this amendment is in the public interest.

IV. PROCEDURAL MATTERS

8. This amendment has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, and found to contain no new or modified form, information collection or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

9. This amendment will effect only a small number of maritime entities and allows these VTS frequencies to be licensed conditionally for the purposes set forth in our Rules when there is no VTS system in the area. This change constitutes a minor amendment to our Rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. § 553(b)(B), is unnecessary. Furthermore, in light of the heavy maritime frequency traffic in New York and New Orleans, we find that there is good cause to make the specified VTS channels available immediately. Therefore, this rule amendment will be effective immediately upon publication in the Federal Register.

V. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) & 303(r), Section 80.383 of the Commission's Rules, 47 C.F.R. § 80.383, IS AMENDED as set forth in the Appendix below, effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.383(a) is amended by placing footnote designator "1" next to certain cities in the "Geographic areas" column of the Table and by placing the text of footnote 1 below the Table, to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
156.250	Seattle.
156.550	New York[1], New Orleans[1], Houston.
156.600	New York, New Orleans[1], Houston.
156.700	New York[1], New Orleans[1], Seattle.

FOOTNOTE FOR APPENDIX

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS systems for the port areas of New York and New Orleans. If the United States Coast Guard re-establishes one or both of these systems, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

FOOTNOTES

[1] The New York system was closed July 29, 1988, and the New Orleans system was closed April 29, 1988.

[2] *See* Report and Order in Docket No. 20444, 56 FCC 2d 1089 (1975).

[3] *See* 47 C.F.R. § 80.373(f).

[4] *See* Letter from J.D. Hersey, Jr., Chief, Marine Radio Policy Branch, U.S.C.G., to Robert E. Mickley, Chief, Aviation & Marine Branch, F.C.C. (July 13, 1988).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Part 2 of the
Commission's Rules to Allow
non-Government Use of the Tracking
and Data Relay Satellite System in
the 14.896-15.121 GHz Band

ORDER

Adopted: January 27, 1989; Released: February 15, 1989

By the Commission:

INTRODUCTION

1. By this action the Commission amends the Table of Frequency Allocations in Part 2, Section 2.106 of the Rules, 47 CFR 2.106, by adding a footnote to permit non-Government space stations to transmit to the National Aeronautics and Space Administration's (NASA) Tracking and Data Relay Satellite System (TDRSS) using the 14.896-15.121 GHz band.

BACKGROUND

2. The TDRSS is used to relay data and ranging information between near-Earth orbiting space stations and earth stations. NASA makes the TDRSS available for use by non-Government entities.[1] On August 27, 1984, the Commission, at the request of the National Telecommunication and Information Administration (NTIA), adopted footnote US303 to allow non-Government space stations to transmit to TDRSS in the 2285-2290 MHz band. On March 11, 1988, NTIA filed a letter requesting the Commission adopt a similar footnote to permit industrial space facilities access to TDRSS operations in the 14.896-15.121 GHz band to accommodate high-speed data transmissions. In addition, NTIA suggested that power flux density (PFD) limits, consistent with recommendations of the International Radio Consultative Committee (CCIR), be included in the new footnote.[2] NTIA stated that these PFD limits will ensure the compatibility of commercial low-orbit spacecraft with terrestrial systems sharing the band.

3. Currently, the 14.7145-15.1365 MHz band is allocated for Government mobile service on a primary basis and Government fixed and space research services on a secondary basis. There is no allocation for non-Government use. To permit commercial users access to the 14.896-15.121 GHz TDRSS frequencies, NTIA recommended that we adopt the following footnote to the Table of Frequency Allocations, Section 2.106 of the Rules, for the 14.7145-15.1365 GHz band:

US310

In the band 14.896-15.121 GHz, non-Government space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Government stations. The power flux density at the earth's surface from such non-Government stations shall not exceed -138 to -148 $dBW/m^2/kHz$, depending on the angle of arrival, in accordance with CCIR Recommendation 510-1.

DISCUSSION

4. On February 11, 1988, the President issued a revised directive on national space policy, calling upon the Government to identify and eliminate or propose for elimination applicable portions of United States laws and regulations that unnecessarily impede non-Government space sector activities. [3] This policy also places strong emphasis on the role of commercial space operations and endorses the establishment of industrial space facilities. The Office of Commercial Space Transportation, Department of Transportation (DOT) has been given the responsibility of administering government programs in support of commercial space activities. In adopting licensing regulations for commercial activities, DOT stresses that one of its major goals is to encourage and promote the industry through carefully considered policies and procedures designed to eliminate regulatory uncertainties.[4] For the foreseeable future, commercial space operations will be dependent on Government data relay satellites for radiocommunications to and from earth. In order to facilitate future expansion of commercial operations in space, access to certain TDRSS frequencies will be required.

5. Since there are no non-Government operations in the 14.896-15.121 GHz band, NTIA's request will not affect any non-Government spectrum users. Allowing commercial entities to make greater use of the TDRSS will provide lower cost radiocommunications for commercial space ventures and will therefore help to further space research and technology. In light of these considerations we find NTIA's request to be in the public interest. Moreover, adopting the footnote is consistent with the President's objective of removing obstacles to non-Government space activities. We note that the power flux density limits suggested by NTIA is in agreement with a CCIR Recommendation and is necessary to protect against interference to Government terrestrial operations in this frequency band. Accordingly, we are amending the Table of Frequency Allocations by adding the footnote requested by NTIA.

ADMINISTRATIVE

6. We find that, pursuant to Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, good cause exists for dispensing with the notice and public procedure on this action. The frequencies in question are allocated for Government use only and NTIA has requested this action. Since no other non-Government services will be affected by this action, notice and comment are unnecessary.

7. Authority for this action is contained in Sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(c), 303(f), 303(g), and 303(r).

8. Accordingly, IT IS ORDERED, that Section 2.106 is amended as specified below, effective **March 31, 1989.**

RULE CHANGES

9. In view of the foregoing, Part 2 of the Commission's Rules is amended as follows:

A. PART 2 - FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

AUTHORITY: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by listing footnote US310 in column 4 for the 14.7145-15.1365 GHz band, and column 5 for the 14.50-15.35 GHz band and adding the text of footnote US310 to the list at the end of the table as follows:

Section 2.106 ***Table of Frequency Allocations***

United States table

Government Allocation (GHz) (4)	Non-Government Allocation (GHz) (5)
* * *	* * *
14.5000-14.7145	14.50-15.35
FIXED. Mobile. Space Research.	
14.7145-15.1365	
MOBILE. Fixed. Space Research	
US310 G119	
15.1365-15.35	
FIXED. Mobile. Space Research.	
720 US211	720 US211 US310
* * *	* * *

* * * * *

United States (US) Footnotes

* * * * *

US310

In the band 14.896-15.121 GHz, non-Government space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Government stations. The power flux density at the earth's surface from such non-Government stations shall not exceed -138 to -148 dBW/m^2/kHz, depending on the angle of arrival, in accordance with CCIR Recommendation 510-1.

* * * * *

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] NASA Management Instruction 8410.3.

[2] *See* CCIR Recommendation 510-1, *Feasibility of Frequency Sharing Between the Space Research Service and Other Services in Band 10*, Recommendations and Reports of the CCIR, Volume II, (1986).

[3] *See* The White House, Office of the Press Secretary Fact Sheet, "Presidential Directive on National Space Policy," dated February 11, 1988.

[4] *See* Commercial Space Transportation; Licensing Regulations, 53FR 11004, 11008, April 4, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-11

In the Matter of

Amendment of Section 73.202(b),	RM-6553
Table of Allotments,	
FM Broadcast Stations.	
(Mount Gilead, Ohio)	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 19, 1989; Released: February 15, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by the Ohio Bible Study Group (petitioner) requesting the allotment of Channel 236A to Mount Gilead, Ohio, as the community's first local FM service. Petitioner states that it will apply for the channel, if allotted.

2. Channel 236A can be allotted to Mount Gilead in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) northeast to avoid a short-spacing to Station WSNY, Channel 234B, Columbus, Ohio, and Station WKTN, Channel 237A, Kenton, Ohio.[1] Canadian concurrence in the allotment must be received since Mount Gilead is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3 We believe the public interest would be served by proposing the allotment of Channel 236A to Mount Gilead, Ohio, since an interest has been expressed in providing the community with its first local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Mount Gilead, Ohio	–	236A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 10, 1989,** and reply comments on or before **April 25, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Allan G. Moskowitz, Esq.
Kaye, Scholer, Fierman, Hays & Handler
The McPherson Building
901-15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in

initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 40-34-16 and West Longitude 82-49-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-14

In the Matter of

Amendment of Section 73.202(b), RM-6524
Table of Allotments,
FM Broadcast Stations.
(Hot Springs and Pine Ridge,
South Dakota)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 17, 1989; Released: February 15, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Tracy and Valerie Bastian (petitioners), requesting the substitution of Channel 244A for Channel 244C1 at Hot Springs, South Dakota, and the modification of their license for Station KZMX(FM) to specify the higher powered channel. In addition, in order to avoid a short-spacing between Channel 244C1 at Hot Springs and Channel 243A at Pine Ridge, South Dakota, the petitioners request the substitution of Channel 228A for unused and unapplied for Channel 243A at Pine Ridge, South Dakota.[1]

2. Channel 244C1 can be allotted to Hot Springs in compliance with the Commission's minimum distance separation requirements and can be used at Station KZMX(FM)'s present transmitter site.[2] Channel 228A can be allotted to Pine Ridge in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[3] As requested, we shall also propose to modify petitioners' license for Station KZMX(FM) to specify operation on Channel 244C1. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Hot Springs or require the petitioners to demonstrate the availability of an additional equivalent channel for use by such interested parties.

3. We believe the public interest would be served by proposing the substitution of channels at Hot Springs and Pine Ridge, South Dakota, since it could enable Station KZMX(FM) to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hot Springs, South Dakota	244A	244C1
Pine Ridge, South Dakota	243A	228A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 10, 1989,** and reply comments on or before **April 25, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Neal J. Friedman, Esq.
Pepper & Corazzini
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006
(Counsel to petitioners)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Channel 243A was allotted to Pine Ridge in the omnibus FM rule making, MM Docket No. 84-231. However, the proscription against the substitution of these channels does not apply here since the window for filing applications has closed and there are no pending applications for its use.

[2] The coordinates for Channel 244C1 at Hot Springs are North Latitude 43-26-34 and West Longitude 103-27-27.

[3] The coordinates for Channel 228A at Pine Ridge are North Latitude 43-01-06 and West Longitude 102-33-24.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-52

In the Matter of

Amendment of Section 73.202(b), RM-6032
Table of Allotments,
FM Broadcast Stations.
(Panama City Beach, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 19, 1989; Released: February 15, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Winstanley Broadcasting, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 1101 (1988), proposing the substitution of Channel 261C2 for Channel 261A at Panama City Beach, Florida, and the modification of its construction permit to specify the higher powered channel. The petitioner, Robert T. Rowland, Sr. (Rowland), Niceville Radio Limited, A Florida Limited Partnership (Niceville Radio) and Emerald Coast Broadcasting, Inc. (Emerald Coast) filed comments. The petitioner filed reply comments.

2. Rowland, Niceville Radio and Emerald Coast are three of twelve applicants for Channel 262A at Niceville, Florida. They note that the *Notice* herein imposed a site restriction on Channel 261C2 of 17.5 miles southeast in order to avoid a short-spacing to the Niceville allotment reference coordinates. However, they all oppose the proposal herein, stating that the allotment would limit the placement of the Niceville transmitter to an area which is either encompassed by Eglin Air Force Base or to a small area outside of but close to its main runways, thus making it substantially less likely that a full Class A facility could be constructed. According to Niceville Radio, the only area where there is an existing tower that is close to the 328 foot maximum for Class A stations, and thus more likely to receive Federal Aviation Administration approval, would be foreclosed if petitioner's upgrade is granted. It goes on to point out that Channel 262A will provide Niceville with its first local FM and second local aural service while the allotment of Channel 261C2 will only upgrade an existing service at Panama City Beach, a community which already has two local FM services, one of which is a wide-area coverage station. Therefore, it contends that the construction of a full Class A facility at Niceville should be preferred over petitioner's requested upgrade. However, should the Commission find that the public interest would be served by allotting Channel 261C2 to Panama City Beach, Rowland requests the imposition of an additional three mile further east site restriction so as to enable the Niceville applicants to specify sites further away from Eglin Air Force Base.

3. Emerald Coast additionally argues that the proposed Panama City Beach allotment cannot be made in compliance with the Commission's technical requirements. It states that the transmitter site specified in the *Notice* lies within the confines of the Tyndall Air Force Base, thus raising questions as to the availability of a usable site. Further, even if a site were available which would not be a hazard to air navigation, Emerald Coast contends that compliance with the minimum coverage requirements set forth in Section 73.315 of the Commission's Rules would not be possible. Using the map submitted by petitioner in its request for rule making, Emerald Coast states that Panama City Beach is a long, narrow seashore community approximately two kilometers wide and 21 kilometers long. It goes on to state that its technical consultant has determined that the outer boundaries of Panama City Beach are approximately 17 kilometers northwest and seven kilometers southeast of the community's reference coordinates. Assuming maximum facilities of 50 kW at 150 meters for a Class C2 station, and thus a 3.16 mV/m principal community contour of approximately 32.7 kilometers from the transmitter site, it has determined that 46 percent of Panama City Beach would not receive the minimum 70 dBu signal strength required by the Commission's Rules.

4. In reply, petitioner disputes the opponents claim that the allotment of Channel 261C2 at Panama City Beach would impose a substantial burden on the applicants for the Niceville channel. Specifically, it states that eight of the twelve applicants have specified sites which comply with the proposed coordinates for Channel 261C2 at Panama City Beach. As to the transmitter site for the Panama City Beach allotment, petitioner states that it, like the Niceville applicants, is not obligated to erect its antenna at the specific coordinates of N. Lat. 30-03-06 and W. Long. 85-33-06 specified by the Commission in the allotment proceeding. It goes on to submit that it anticipates using a site at coordinates of approximately N. Lat. 30-08-14 and W. Long. 85-30-00, which it states is miles from the Tyndall runways. It contends that this site could accommodate a tower of 440 feet above mean sea level.

5. Petitioner concedes that the entire community would not receive a 70 dBu or 3.16 mV/m signal from a transmitter complying with the 28.2 kilometer southeast site restriction. However, it states such coverage would be provided to the "heart" of the community's population and businesses, which it says it centered in the easternmost portion of Panama City Beach. To this end, petitioner submits a copy of the USGS Florida 1:500,000 scale map which shows that less than 50% of the area within the incorporated boundaries of Panama City Beach will receive the required 70 dBu service, but that the area not receiving 70 dBu service is designated as Long Beach Resort, Edgewater Gulf Beach, Gulf Beach, Bahama Beach, Lullwater Beach and Gulf Resort Beach. It goes on to note that the community is of such an unusual shape that even its Class A facility, with a transmitter site within the city limits, will not provide city-grade service to all of Panama City Beach. Further, it states that a waiver of the minimum coverage requirements is not unprecedented, citing *Lester H. Allen*, 15 FCC 2d 767 (1968), wherein the Commission waived its city-grade requirements for a station serving the beachfront community of Ocean City, New Jersey, which it states is shaped similarly to Panama City Beach. It contends that the identical circumstances are present in this case and that it

too will provide the "best possible coverage." Finally, petitioner also opposes the imposition of an additional three kilometer site restriction since it would further restrict the area receiving 70 dBu service. It argues that the original site restriction was imposed so as to permit both allotments, not to accommodate individual Niceville applicants who have not sought to use fully-spaced sites.

6. Based on the record before us, we find that the proposed allotment of Channel 261C2 to Panama City Beach is technically deficient and thus must be denied. As pointed out by Emerald, and acknowledged by petitioner, use of the channel with the required minimum site restriction of 28.2 kilometers (17.5 miles) southeast, will not permit compliance with Section 73.315 of the Commission's Rules. This rule provides that a transmitter must be located so as to place a signal of 70 dBu, or 3.16 mV/m, over the entire principal city to be served from a site complying with the minimum distance separation requirements. The fact that additional places, such as those referred to by petitioner, may be subsumed within the incorporated boundaries of Panama City Beach, does not negate the requirements of Section 73.315.

7. We decline to waive the city-grade signal requirements on the record before us. We recognize that there may be instances in which strict compliance with the principal city coverage requirement is impossible due to the large area within a community's incorporated boundaries or the highly irregular shape of those boundaries. In such instances, we might consider a request for waiver of the city-grade coverage requirement, at the allotment stage, provided that the waiver request was supported by a proper showing. However, petitioner has not met its burden in supporting the waiver. First, although we recognize that a waiver was necessary for petitioner's presently authorized facilities, petitioner did not establish that an upgraded allotment at Panama City Beach, with the necessary site restriction, would provide 70 dBu coverage to an equal or greater percentage of Panama City Beach than its presently authorized facility.[1] Second, petitioner did not establish with any specificity the site it intends to use, or the availability of any such site. Under such circumstances, it is impossible to evaluate petitioner's request with the degree of certainty necessary when the waiver of a technical requirement so fundamental as the city-grade coverage requirement is at issue. The Commission has declined to consider waivers of the city-grade coverage rule at the allotment stage because no specific sites were before it. *See, Greenwood, South Carolina, et al.*, 3 FCC Rcd 4108 (1988), 3 FCC Rcd 4374 (1988) and cases cited therein. For the same reason, *Lester H. Allen, supra*, is inapposite in that the requirements of Section 73.315 were not waived at the allotment stage but rather in connection with an actual application. In light of this decision, we need not reach the issue of whether the allotment at Panama City Beach should be preferred over any of the sites selected by the Niceville applicants.

8. Accordingly, IT IS ORDERED, That the petition for rule making submitted by Winstanley Broadcasting, Inc. IS DENIED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Unlike this proceeding, no party raised a city-grade coverage issue when the Commission was considering the allotment of Channel 261A to Panama City Beach. Thus, the Commission was unaware that use of the allotment could require a waiver of Section 73.315 of the Rules. *See*, MM Docket 83-236, 48 FR 43177, published September 22, 1983.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GENERAL TELEPHONE OPERATING COMPANIES — AAD 8-1928

Petition for Waiver of the Requirement that Revisions to the GTOC Cost Allocation Manual Shall Be Effective Retroactive to January 1, 1988

MEMORANDUM OPINION AND ORDER

Adopted: January 13, 1989; Released: January 26, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On November 17, 1988, the GTE Service Corporation and its affiliated domestic telephone operating companies (the "GTE telephone companies" or "GTOCs") filed a Petition for Limited Waiver. The GTOCs request a selected waiver of the requirement contained in paragraph 3 of the *GTOC CAM Order* [1] that all revisions to the GTOCs' Cost Allocation Manual shall be effective retroactive to January 1, 1988. The GTOCs seek permission to continue applying their cost allocation manual as originally proposed for the balance of 1988 in the case of certain accounts and companies. For certain other accounts and companies, the GTOCs propose to implement their revised manual retroactive to January 1, 1988, but with certain necessary modifications. Aside from these requested exceptions, the GTOCs propose to implement the revised cost allocation manual as of January 1, 1988, as currently required by the *GTOC CAM Order*. For the reasons set forth below, we grant the GTOCs' request for limited waiver.

II. BACKGROUND

2. Consistent with the requirements of the *Joint Cost Order* [2] the GTOCs filed a cost allocation manual on August 28, 1987 (the "Original CAM"), and implemented this proposed manual on January 1, 1988, pending review and approval by the Common Carrier Bureau. We issued the *GTOC CAM Order* on June 6, 1988, approving the GTOC's proposed cost allocation manual subject to a number of conditions and requirements for the submission of further information. We stated that any revisions to the manual resulting from that order, or a subsequent order concerning the revisions, must be made effective retroactive to January 1, 1988. [3] In accordance with this order, the GTOCs submitted their revised cost allocation manual (the "Revised CAM") on August 5, 1988. We are currently reviewing the Revised CAM.

3. On August 12, 1988, the GTOCs filed a petition for waiver seeking blanket relief from the retroactivity requirement contained in paragraph 3 of the *GTOC CAM Order*. The GTOCs sought permission to continue applying the Original CAM for the balance of 1988, and to begin applying the revised manual as of January 1, 1989, for *all* companies and accounts. We denied that petition without prejudice to the filing of a waiver request more limited in scope.[4]

4. Our fundamental objection with the original waiver petition was the sweeping relief sought by the GTOCs. We found their blanket waiver request to be at odds with our primary goal of achieving accurate cost separation in 1988.[5] We noted that the GTOCs failed to demonstrate unique or extraordinary circumstances surrounding retroactive implementation of the Revised CAM, as most carriers involved in the cost separation process are subject to identical retroactivity requirements and face similar administrative burdens.[6] In addition, we observed that administrative difficulty was insufficient grounds for seeking a blanket waiver under these circumstances.[7] We concluded that the GTOCs must demonstrate that retroactive implementation of the Revised CAM is impossible, not just administratively difficult, in specific instances in order to justify selected relief.[8] The GTOCs have filed this Petition for Limited Waiver in response to our concerns and standards enunciated in the *Waiver Order*.

III. THE GTOCS' PETITION

5. The GTE Telephone Companies contend that they cannot implement the Revised CAM retroactively to January 1, 1988, in the case of specific accounts and companies due to the unavailability of necessary data. The GTOCs note that the *GTOC CAM Order* required inclusion of several new cost pools in their cost allocation manual. They point out that procedures were not in place prior to the June 1988 release of the *GTOC CAM Order* to capture certain data necessary to form these unanticipated new cost pools. The GTOCs maintain that the unavailability of this data for the first half of 1988 makes it impossible to comply with the new cost pool requirements in all instances. Thus, they seek relief from the retroactivity provision contained in the *GTOC CAM Order* as to selected accounts and companies for which necessary data is either totally or partially unavailable.[9]

6. The GTOCs advance two approaches to address the problems associated with retroactive implementation of the Revised CAM. First, the GTOCs propose to continue applying the Original CAM for the balance of 1988 in the case of certain accounts and companies for which necessary data is totally lacking. As to these accounts and companies only, the Revised CAM would become effective as of January 1, 1989. This first category includes Accounts 6725, 6712, 6534, and 6535.[10]

7. For a second category of accounts and companies, the GTOCs propose retroactive application of the Revised CAM -- but with certain modifications. The GTOCs suggest these modifications to address specific problems caused by incomplete data in particular instances. This second category includes Accounts 6124, 6724, 6121, 6711, 1130, 1140, 1150, and 1160.[11] Apart from these two categories of specific exceptions, the GTOCs would implement the revisions required by the *GTOC CAM Order* and contained in the Revised CAM retroactively to January 1, 1988.[12]

8. The GTOCs provide a detailed description of the circumstances surrounding each account for which they request relief. They describe the cost pools proposed in the Original CAM, the revisions and new cost pools contained in the Revised CAM, the problems associated with implementing these changes on a retroactive basis, and a requested resolution for each account.[13] The problems and resolutions described in the GTOCs' petition are generally quite similar, and a clear pattern develops with respect to each category of accounts. Accordingly, we will not discuss each account *seriatim*. Rather, for both approaches advanced by the GTOCs we will describe one account illustrating the problems and suggested resolution typical of that category of accounts.

9. The first approach proposed by the GTOCs involves accounts for which data necessary to form newly required cost pools is totally unavailable. A typical example of this category is Account 6725, Legal. The Original CAM proposed one common cost pool for this account that was apportioned to regulated and nonregulated operations based on the General Allocator. In accordance with the requirements of the *GTOC CAM Order*,[14] the Revised CAM proposes an additional direct-reported common cost pool, "common law library and general research", which is apportioned to regulated and nonregulated operations based on the Legal Allocator Study. The GTOCs state that subaccounts and time reporting required to direct-report the new "common law library and general research" cost pool are not available in the GTOCs in 1988. Since the requisite information is not available, the GTOCs seek to apply the Original CAM for the balance of 1988 for all GTOCs. The GTOCs would implement the Revised CAM, with its new common cost pool, beginning in 1989.[15]

10. The second approach requested by the GTOCs concerns accounts for which data necessary to comply with the Revised CAM is partially unavailable in 1988. The GTOCs propose to apply the Revised CAM retroactively to January 1, 1988, for this category of accounts, but with appropriate modifications to address specific instances when data is deficient. Account 6711, Executive, is illustrative of this category. The Original CAM had only one direct-reported cost pool which was apportioned to regulated and nonregulated operations based on the General Allocator. In response to concerns raised in the *GTOC CAM Order*,[16] the Revised CAM proposes a number of cost pools, one of which is direct-reported through time reporting; the others are established by the use of the Analysis of Functional Activity Study which is described as being prepared on a departmental basis. The GTOCs state that the data required to complete the Analysis of Functional Activity Study is available only on a total-company basis in 1988, not by department. The GTOCs propose to modify this apportionment study to a total-company basis for 1988, and to begin applying this study on a departmental basis beginning in 1989.[17]

IV. DISCUSSION

11. Petitions for waiver must be supported by a good cause showing of unique or extraordinary circumstances, and that a waiver would be in the public interest.[18] We conclude that the GTOCs have made the necessary showing to justify selected relief in this instance.

12. The Petition for Limited Waiver indicates that the GTE Telephone Companies have made a good faith effort to comply with the Revised CAM in 1988. The GTOCs will implement the Revised CAM retroactively to January 1, 1988, for the large majority of accounts and companies. The GTOCs request relief only when data necessary to comply with the requirements of the Revised Cam are unavailable for 1988.

13. The release of the *GTOC CAM Order* in June presented the GTOCs with the difficult task of attempting to capture data for new cost pools on a retroactive basis. Procedures were not in place to accumulate certain data required to comply with the new cost pool requirements of the *GTOC CAM Order*. We recognized in the *Waiver Order* that certain types of data, such as time reports for early 1988, cannot be captured on a retroactive basis.[19] The unavailability of data essential to form unanticipated cost pools constitutes a unique and extraordinary circumstance justifying limited waiver of the retroactivity requirement. The limited nature of the waiver will further the public interest by requiring the GTOCs to conform as closely as possible to the Revised CAM in 1988, thus facilitating accurate cost allocation and protecting ratepayers from cross-subsidization.

14. The GTOCs' initial petition for waiver focused improperly on the administrative difficulty involved in retroactively implementing the Revised CAM, and requested impermissibly broad relief from the retroactivity requirement. The GTOCs have avoided those two infirmities in this Limited Petition for Waiver. Here the GTOCs have offered a very specific proposal seeking selected relief. They have demonstrated the impossibility of complying with the Revised CAM in the case of certain accounts and companies. They have also limited the scope of the relief requested, as contemplated by the *Waiver Order*. In sum, the GTOCs have shown that ". . .it will be impossible, rather than just administratively difficult, to comply with the Revised CAM in specific instances. . ." and have "identifi[ied] those areas specifically with sufficient clarity and documentation to justify relief."[20] Thus, we grant the GTE Telephone Companies' Petition for Limited Waiver as set forth more specifically in Appendix A.[21]

V. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that the Petition for Limited Waiver filed on November 17, 1988, by the GTE Telephone Companies IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] General Telephone Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 3573 (1988) (GTOC CAM Order).

[2] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298 (1987) (Joint Cost Order), modified on recon., 2 FCC Rcd

6283 (1987), modified on further recon., 3 FCC Rcd 6701 (1988), petitions for review pending, Southwestern Bell Tel. Corp. v. FCC, D.C. Circuit No. 87-1764 (filed Dec. 14, 1987); National Tel. Cooperative Ass'n v. FCC, D.C. Circuit No. 87-1771 (filed Dec. 15, 1987).

[3] GTOC CAM Order, 3 FCC Rcd at 3573, para. 3.

[4] General Telephone Operating Companies, Petition for Waiver of the Requirement that Revisions to the GTOC Cost Allocation Manual Shall Be Effective Retroactive to January 1, 1988, 3 FCC Rcd 6017 (1988) (Waiver Order).

[5] *Id.* at 6018, paras. 9, 11.

[6] *Id.* at para. 8.

[7] *Id.* at para. 9.

[8] *Id.*

[9] Petition at 2-3.

[10] *Id.* at 2, 3-6.

[11] *Id.* at 2, 6-11.

[12] *Id.* at 2.

[13] *Id.* at 3-11.

[14] *GTOC CAM Order,* 3 FCC Rcd at 3579, para. 57.

[15] Petition at 4.

[16] *GTOC CAM Order,* 3 FCC Rcd at 3579, para. 53.

[17] Petition at 10-11.

[18] 47 C.F.R. § 1.3 (1987); Southwestern Bell Telephone Company *et al.,* Petitions for Waiver of Section 65.102, 2 FCC Rcd 7314, para. 8 (1987).

[19] *Waiver Order,* 3 FCC Rcd at 6018, para. 9.

[20] *Id.*

[21] In granting this waiver request, we resolve only the immediate issue of retroactive implementation of the Revised CAM in 1988. This decision does not constitute approval of the new cost pools and allocations procedures proposed in the Revised CAM. We are currently reviewing the GTOCs' proposed revisions and will address their validity in a subsequent order. Moreover, we intend to closely monitor the GTOCs' 1988 operating results produced under the approach described in Appendix A. To the extent this approach results in inaccurate cost allocation (*i.e.*, an inordinately large percentage of costs being apportioned to regulated service), we reserve the right to require subsequent adjustments to reflect the impact of the lack of retroactivity on 1988 operations.

APPENDIX A

Page 1 of 4

Account	Account Description	GTOCs Affected	Summary of Approved Deviation from Revised CAM
6725	Legal	All GTOCs	Apply the Original CAM for 1988 for all GTOCs. Subaccounts and time reporting required to direct-report the new common law library and general research cost pool are not available.
6712	Planning	All GTOCs	Apply the Original CAM for 1988 for all GTOCs. Subaccounts and time reporting required to direct-report the three new cost pools are not available.
6534	Plant Operations Admin. Expense	GTE North GTE South GTE Florida GTE Calif. GTE Hawaii	Apply the Original CAM for 1988 as to five GTOCs (GTE North, GTE South, GTE Florida, GTE California, and GTE Hawaii). Subaccounts and time reporting required to direct-report to the new cost pools are not available for these five GTOCs. Other GTOCs will apply the Revised CAM.
6535	Engineering Expense	GTE North GTE South GTE Florida GTE Calif. GTE Hawaii	Apply the Original CAM for 1988 as to five GTOCs (GTE North, GTE South, GTE Florida, GTE California, and GTE Hawaii). Subaccounts and time reporting required to direct-report to the new cost pools are not available for these five GTOCs. Other GTOCs will apply the Revised CAM.

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Account	Account Description	GTOCs Affected	Summary of Approved Deviation from Revised CAM
6124	General Purpose Computers Expense	GTE South GTE North GTE Florida GTE Hawaii	For GTE South only, modify the Analysis of Data Entry and Control study period from six months to one month for 1988. The necessary data to complete the six-month study was not captured for GTE South. Allow GTE North, GTE Florida, and GTE Hawaii to use the Original CAM for cost pool formation in 1988. For these GTOCs, apportion the common cost pool by Total Company Wages and Salaries in 1988 as proposed in the Revised CAM, rather than the General Allocator used in the Original CAM. The subaccounts and time reporting required to direct-report to the new cost pools are not available, and the Analysis of System Use, Inventory Systems Transaction, and Analysis of Accounting Records apportionment studies were not established in 1988 for these three GTOCs.
6724	Information Management	GTE South GTE North GTE Florida GTE Hawaii	For GTE South only, modify the Analysis of Data Entry and Control study period from six months to one month for 1988. The necessary data to complete the six-month study was not captured for GTE South. Allow GTE North, GTE Florida, and GTE Hawaii to use the Original CAM for cost pool formation in 1988. For these GTOCs, apportion the common cost pool by Total Company Wages and Salaries in 1988 as proposed in the Revised CAM, rather than the General Allocator used in the Original CAM. The subaccounts and time reporting required to direct-report to the new cost pools are not available, and the Analysis of System Use, Inventory Systems Transaction, and Analysis of Accounting Records apportionment studies were not established in 1988 for these three GTOCs.

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Account	Account Description	GTOCs Affected	Summary of Approved Deviation from Revised CAM
6121	Land and Building Expense	All GTOCs	For all GTOCs with the exception of GTE South and GTE North, modify the Analysis of Rented Land and Buildings apportionment study so it is on a total-company basis for 1988. This data was not captured in the detail necessary, i.e., by each facility, to complete the study in accordance with the Revised CAM. For GTE North and GTE South, apply the Original CAM in 1988. Information was not captured on a total-company basis in these two companies.
6711	Executive	All GTOCs	Modify the Analysis of Functional Activity apportionment study to a total-company basis for all GTOCs in 1988. Data required to complete this study is available only on a total-company basis in 1988, not by department.
1130	Cash	All GTOCs	Continue existing internal procedures to directly assign this cash item to regulated and nonregulated operations for all GTOCs in 1988. Beginning in 1989, apply the cash allocation procedures as filed in the Revised CAM.
1140	Special Cash Deposits	All GTOCs	Continue existing internal procedures to directly assign this cash item to regulated and nonregulated operations for all GTOCs in 1988. Beginning in 1989, apply the cash allocation procedures as filed in the Revised CAM.
1150	Working Cash Advances	All GTOCs	Continue existing internal procedures to directly assign this cash item to regulated and nonregulated operations for all GTOCs in 1988. Beginning in 1989, apply the cash allocation procedures as filed in the Revised CAM.

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Account	Account Description	GTOCs Affected	Summary of Approved Deviation from Revised CAM
1160	Temporary Investments	All GTOCs	Continue existing internal procedures to directly assign this cash item to regulated and nonregulated operations for all GTOCs in 1988. Beginning in 1989, apply the cash allocation procedures as filed in the Revised CAM.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-189

In the Matter of

Amendment of Section 73.202(b), RM-6284
Table of Allotments,
FM Broadcast Stations.
(Highlands, North Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 17, 1989; Released: February 16, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Mountain-High Broadcasters, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 2557 (1988), proposing the allotment of Channel 283A to Highlands, North Carolina, as the community's first local FM service. Petitioner and Palm Beach Broadcasting Company (Palm Beach) filed comments supporting the allotment and stating an intention to apply for the channel. No other comments were received.

2. We believe the public interest would be served by allotting Channel 283A to Highlands, North Carolina, since it could provide the community with its first local FM service. Channel 283A can be allotted to Highlands in compliance with the Commission's minimum distance separation requirements with a site restriction of 1 kilometer (0.6 miles) northeast to avoid a short-spacing to Channel 281A at Clayton, Georgia, for which there are applications pending.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 3, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Highlands, North Carolina	283A

4. The window period for filing applications will open on **April 4, 1989**, and close on **May 4, 1989**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are: North Latitude 35-03-39; West Longitude 83-11-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-294

In the Matter of

Amendment of Section 73.202(b),	RM-5029
Table of Allotments,	RM-5155
FM Broadcast Stations.	RM-5560
(Blackshear, Richmond Hill and Folkston, Georgia)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 26, 1989; Released: February 16, 1989

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration petitions for reconsideration filed by Hinesville Broadcasting Corporation and Mattox-Guest, Inc. directed against the *Report and Order* in this proceeding, 2 FCC Rcd 3323 (1987), which allotted Channel 222A to Folkston, Georgia and Channel 286A to Richmond Hill, Georgia.[1] Ebony Broadcasting Company filed an opposition to the Mattox-Guest, Inc. petition for reconsideration.[2] Mattox-Guest, Inc. filed a reply and Hinesville Broadcasting Corporation filed a supplement to its petition for reconsideration.[3] We will grant the petition for reconsideration by Hinesville Broadcasting Corporation to the extent of substituting Channel 223A in lieu of Channel 222A at Folkston. We will grant the petition for reconsideration by Mattox-Guest, Inc. by substituting Channel 287A in lieu of Channel 286A at Richmond Hill, and substituting Channel 286C2 in lieu of Channel 285A at Blackshear, Georgia. We will provide a background and the reasons for these actions below.

BACKGROUND

2. This proceeding began with the filing of two mutually exclusive petitions for rule making. The first was filed by Ebony Broadcasting Company proposing the allotment of Channel 286A to Richmond Hill, Georgia as a first local FM service. The second petition for rule making was filed by Mattox-Guest, Inc., licensee of Station WKUB, Channel 285A, Blackshear, Georgia, proposing the substitution of Channel 286C2 in lieu of Channel 285A at Blackshear and modification of the Station WKUB license to specify operation on Channel 286C2. The *Notice of Proposed Rule Making* in this proceeding, 51 Fed. Reg. 25582, published July 15, 1986, set forth these two options. In addition, the *Notice* also referenced a staff study that Channel 287A could be allotted to Richmond Hill which would remove the conflict with the Channel 286C2 upgrade at Blackshear. After the date of the *Notice*, a separate petition for rule making was filed by Folkston Broadcasting, Inc. proposing the allotment of Channel 287A to Folkston, Georgia. That petition was accepted as a timely counterproposal in this proceeding. In its supplemental comments, Folkston Broadcasters, Inc. furnished information indicating that either Channel 222A or 223A could be allotted to Folkston.

3. In the *Report and Order*, we allotted Channel 222A to Folkston. This removed a Folkston conflict with the proposed allotments at Richmond Hill and Blackshear. In addition, we concurred with the comments by Ebony Broadcasting Company, proponent for an allotment at Richmond Hill, that a Channel 287A allotment at Richmond Hill is unworkable. Specifically, we noted that due to the existing Channel 288A allotment at Hilton Head Island, South Carolina, the site area for a Channel 287A allotment was extremely limited and this area would be unavailable. A Channel 287A allotment at Richmond Hill would have accommodated the Channel 286C2 upgrade at Blackshear. Therefore, it was then necessary to select between a new Channel 286A allotment to Richmond Hill and the Channel 286C2 upgrade at Blackshear. In accordance with the criteria set forth in *Revision of FM Policies and Procedures*, 90 FCC 2d 88 (1982), the Channel 286A allotment at Richmond Hill as a new service was selected over the upgrade at Blackshear.

4. In its petition for reconsideration, Mattox-Guest, Inc. (Mattox-Guest), requests implementation of its proposal to allot Channel 287A to Richmond Hill, and substitute Channel 286C2 in lieu of Channel 285A at Blackshear. In support of its petition for reconsideration, Mattox-Guest first argues that the determination in the *Report and Order* concerning the unavailability of a transmitter site for Channel 287A at Richmond Hill was "premature". Mattox-Guest also notes that subsequent to this proceeding, the Commission in MM Docket No. 86-469 substituted Channel 291C2 in lieu of Channel 288A at Hilton Head Island, South Carolina. As a result of that action deleting Channel 288A from Hilton Head Island, the potential transmitter sites for a Channel 287A allotment at Richmond Hill are "substantially" increased.

5. In its petition for reconsideration, Hinesville Broadcasting Corporation (HBC), licensee of FM Station WBLU, Channel 221A, Hinesville, Georgia, objects to the allotment of Channel 222A at Folkston. According to HBC, that action effectively forecloses its own plan to upgrade the facilities of Station WBLU to specify operation on Channel 222C2.[4] In this regard, HBC argues that it had no meaningful notice or opportunity to comment on a Channel 222A allotment because the original Folkston counterproposal specified Channel 287A. HBC also asserts that the alternative Channels 222A and 223A advanced by the Folkston proponent in supplemental comments were unauthorized and were not put on public notice. As such, these proposed channel allotments should not be considered apart from its conflicting Hinesville upgrade proposal on Channel 222C2.

DISCUSSION

6. After careful consideration of this matter, we have determined that the public interest will be advanced by (1) substituting Channel 287A for Channel 286A at Richmond Hill, (2) substituting Channel 286C2 for Channel 285A at Blackshear, and (3) substituting Channel 223A for Channel 222A at Folkston. These actions will accommodate the concerns of the parties in this proceeding. We will discuss the reasons for these actions below.

Richmond Hill, Georgia

7. On June 10, 1988, the Commission in MM Docket No. 86-469, deleted Channel 288A from Hilton Head Island, South Carolina. 3 FCC Rcd 4312 (1988). As a result of that action Channel 287A can now be allotted to Richmond Hill consistent with the minimum distance separation standards and without the need for a site restriction.[3] Accordingly, there is now no need to address the issues raised in the Mattox-Guest and Ebony Broadcasting Company comments pertaining to an available site for Channel 287A at Richmond Hill. Moreover, a Channel 287A allotment can provide the first local service to Richmond Hill that would be provided by Channel 286A. There are five applications remaining on file for the Channel 286A allotment at Richmond Hill. Since this substitution is not a change in the class of the allotment, these applicants will be permitted to amend their applications to specify Channel 287A without loss of cut-off protection. *See Phillipsburg, Kansas*, 48 Fed. Reg. 10844, published March 15, 1983.

Blackshear, Georgia

8. Deletion of Channel 286A from Richmond Hill allows the use of Channel 286C2 at Blackshear.[5] Accordingly, Channel 286C2 will be substituted in lieu of Channel 285A at Blackshear and the Station WKUB license will be modified to specify operation on Channel 286C2.

Folkston and Hinesville, Georgia

9. As stated earlier, our action in this proceeding allotting Channel 222A to Folkston conflicts with the proposal by HBC to substitute Channel 222C2 at Hinesville and modify its Station WBLU license to specify operation on Channel 222C2. We will grant the HBC petition for reconsideration to the extent of substituting Channel 223A for 222A at Folkston.[7] This removes the Channel 222A impediment at Folkston to the Channel 222C2 upgrade at Hinesville. However, the Hinesville upgrade remains in conflict with a pending proposal in MM Docket No. 87-403, *Douglas, Georgia*, 2 FCC Rcd 6002 (1987).[8] As such, the Hinesville upgrade will be considered in connection with MM Docket No. 87-403.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 3, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

City	Channel No.
Blackshear, Georgia	286C2
Folkston, Georgia	223A
Richmond Hill, Georgia	287A

11. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Mattox-Guest, Inc. for Station WKUB(FM), Blackshear, Georgia, IS MODIFIED effective **April 3, 1989,** to specify operation on Channel 286C2, in lieu of Channel 285A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Mattox-Guest, Inc. IS GRANTED.

13. IT IS FURTHER ORDERED, That the petition for reconsideration filed by Hinesville Broadcasting Corporation IS GRANTED to the extent indicated above.

14. IT IS FURTHER ORDERED, That the Secretary SHALL SEND a copy of this *Memorandum Opinion and Order*, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the remaining applicants for Channel 286A at Richmond Hill, Georgia, and Channel 222A at Folkston Georgia, as follows:

MGT Limited
405 Gleland Street
Savannah, Georgia 31341
(BPH-870819MV, Channel 286A, Richmond Hill, Georgia)

Zephyr Communications Corp.
28 Bridge Street #11
Lowell, Massachusetts 01852
(BPH-870819MK, Channel 286A, Richmond Hill, Georgia)

G. Troy Mattox
P.O. Box 22
Blackshear, Georgia 31516
(BPH-870819MI, Channel 286A, Richmond Hill, Georgia)

Richmond Hill Broadcasting
404 Fifth St., Box 593
Tybee Island, Georgia 31328
(BPH-870819MG, Channel 286A, Richmond Hill, Georgia)

Georgia Broadcasting Partnership
836 Duffy Street
Savannah, Georgia 31401
(BPH-870819MQ, Channel 286A, Richmond Hill, Georgia)

Jack R. Mays
205 Rose Avenue
Folkston, Georgia 31537
(BPH-870721MO, Channel 222A, Folkston, Georgia)

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Public Notice of the Hinesville Broadcasting Corporation petition for reconsideration was given on July 16, 1987, Report No. 1667. Public Notice of the Mattox-Guest, Inc. petition for reconsideration was given on July 28, 1987, Report No. 1670.

[2] Ebony Broadcasting Company is the proponent for Channel 286A to Richmond Hill.

[3] The supplement will be considered in this proceeding pursuant to Section 1.429(d) of the Commission's Rules.

[4] HBC filed its petition for rule making on December 2, 1986 proposing the Channel 222C2 substitution at Hinesville (RM-5657). This petition was returned as unacceptable for filing on November 17, 1987. That action was premised on the short-spacing to the Channel 222A allotment at Folkston as well as a pending proposal to allot Channel 222A to Douglas, Georgia in MM Docket No. 87-403. Thereafter, HBC filed a separate petition for reconsideration directed against that action. Public Notice was given on December 8, 1987, Report No. 1696.

[5] The reference coordinates for the Channel 287A Richmond Hill allotment are 31-56-24 and 81-18-18.

[6] The reference coordinates for the Channel 286C2 Blackshear allotment are 31-14-29 and 82-19-42.

[7] The reference coordinates for the Channel 223A allotment at Folkston are 30-52-29 and 82-01-10. There is one application pending for the Channel 222A allotment at Folkston. This applicant will be permitted to amend his application to specify Channel 223A without loss of cut-off protection.

[8] HBC filed a counterproposal in MM Docket No. 87-403 proposing the Channel 222C2 upgrade at Hinesville.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-383

In the Matter of

Amendment of Section 73.202(b),	RM-6337
Table of Allotments,	
FM Broadcast Stations.	
(Hinesville, Georgia)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 25, 1989; Released: February 16, 1989

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of E. D. Steele, Jr. (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 5003 (1988), proposing the allotment of FM Channel 284A to Hinesville, Georgia, as that community's second FM broadcast service. Petitioner filed comments restating his intention to apply for the channel, if allotted. No other comments were received.

2. Channel 284A can be allotted to Hinesville in compliance with the minimum distance separation requirements.[1] As stated in the *Notice*, the transmitter site must be located at least 0.6 kilometers (0.4 miles) west of the city to meet the spacing requirements to a pending application (870819MC) for Channel 286A at Richmond Hill, Georgia. In view of the fact that the proposed allotment could provide Hinesville with a second FM broadcast service, we believe the public interest would be served by allotting Channel 284A to Hinesville.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 3, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Hinesville, Georgia	221A[2], 284A

4. The window period for filing applications will open on **April 4, 1989,** and close on **May 4, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 284A at the restricted site are 31-50-59 and 81-36-11.

[2] In a separate proceeding, Docket 87-403, Channel 222C2 is proposed as a substitute for Channel 221A at Hinesville.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-323

In the Matter of

Amendment of Section 73.202(b), RM-6268
Table of Allotments,
FM Broadcast Stations.
(Kawaihae, Hawaii)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 25, 1989; Released: February 16, 1989

By the Deputy Chief, Policy and Rules Division:

1. Pursuant to the request of Timothy D. Martz (petitioner) the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 4277 (1988), proposing the allotment of Channel 295A to Kawaihae, Hawaii as that community's first FM allotment. In response to the *Notice*, petitioner filed supporting comments stating his intention to apply for the channel. No other comments were received.

2. Channel 295A can be allotted to Kawaihae in compliance with the Commission's minimum distance separation requirements.[1] We believe the public interest can be served by the allotment of Channel 295A to Kawaihae, Hawaii, as that community's first FM service.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 3, 1989** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Kawaihae, Hawaii	295A

4. The window period for filing applications will open on **April 4, 1989** and close on **May 4, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 295A at Kawaihae are 20-02-30 and 155-50-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-314

In the Matter of

Amendment of Section 73.202(b), RM-6266
Table of Allotments,
FM Broadcast Stations.
(Kahalu'u, Hawaii)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 25, 1989; Released: February 16, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Timothy D. Martz (petitioner), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 4117 (1988), proposing the allotment of Channel 291A to Kahalu'u, Hawaii, as the community's first local FM service. Petitioner filed comments reaffirming his intention to apply for the channel, if allotted. No other comments were received.

2. Channel 291A can be allotted to Kahalu'u, Hawaii in compliance with the Commission's minimum distance separation requirements.[1] We believe the public interest would be served by allotting Channel 291A to Kahalu'u, Hawaii, since it will provide the community with its first local FM service.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 3, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Kahalu'u, Hawaii	291A

4. The window period for filing applications will open on **April 4, 1989**, and close on **May 4, 1989.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 291A at Kahalu'u are 19-35-00 and 155-58-09.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-26

In the Matter of

Amendment of Section 73.202(b), RM-6518
Table of Allotments,
FM Broadcast Stations.
(Sisters, Oregon)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 25, 1989; Released: February 17, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Schuyler H. Martin (petitioner), requesting the allotment of Channel 281A to Sisters, Oregon, as the community's first local FM service. Petitioner states that he will apply for the channel, if allotted. Channel 281A can be allotted to Sisters in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 281A to Sisters, Oregon, since an interest has been expressed in providing the community with its first local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Sisters, Oregon	--	281A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **April 10, 1989,** and reply comments on or before **April 25, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

James M. Weitzman, Esq.
Kaye, Scholer, Fierman, Hays & Handler
901-15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel to petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 44-17-30 and West Longitude 121-33-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

Petition for Waiver of
Section 36.611(a) of the
Commission's Rules

ORDER

Adopted: February 7, 1989; Released: February 16, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On September 1, 1988, the National Exchange Carrier Association, Inc. (NECA) filed a petition for waiver of Section 36.611(a),[1] which sets forth the requirements for the local exchange carriers (LECs) to follow in submitting Universal Service Fund (USF) data to NECA. That rule requires that each LEC submit, on June 30th of each year, actual loop cost data from the prior year to allow NECA to calculate the USF expense adjustment. The June 30, 1989, submission will be the first time that the data submitted by the LECs will use the Commission's new Part 32 accounting rules and Part 36 separations procedures. NECA requests that the June 30, 1989, data submission date be advanced 60 days to May 1 to allow it additional time to analyze the submitted data in an effort to calculate the potential impact of the new Part 32 and Part 36 rules on the size and distribution of the USF. NECA argues that this additional time will provide the Commission and the industry with time to assess the impact of the rule changes on actual cost data used to compute the USF expense adjustment.

2. On September 30, 1988, the Commission invited interested parties to comment on NECA's petition.[2] For the reasons set forth below, we grant NECA's waiver request.

II. BACKGROUND

3. The Commission established the USF to protect telephone subscribers in areas with unusually high non-traffic sensitive (NTS) costs and thus promote the nationwide availability of telephone service at reasonable rates. The USF provides an additional interstate allocation for carriers whose NTS loop costs exceed the national average by 115 percent or more. In the *NTS Recovery Order*,[3] the Commission adopted the recommendation of the Docket 80-286 Joint Board that the USF be targeted to provide an additional interstate expense allocation to small and medium-sized LECs and less assistance to LECs with over 200,000 access lines. In accordance with Section 36.611(a), on June 30th of each year every LEC must submit to NECA actual end-of-year cost data from the preceding year for certain investment and expense items. NECA uses these data to compute the loop cost per working loop on a study area basis for each company and to determine the appropriate USF expense adjustment for qualified LECs. NECA computes the expense adjustment for each LEC, bills the interexchange carriers each month, and disburses the associated revenue to the LECs.[4]

III. PETITION AND COMMENTS

4. NECA requests that the Commission waive the requirement that carriers submit data on June 30, 1989, and instead require that carriers submit the data on May 1, 1989. NECA submits that this 1989 filing will be the first time that loop costs underlying the USF expense adjustment will be developed using the Commission's revised accounting and separations rules that became effective January 1, 1988. NECA states that it participated in an industry USF task force[5] established to analyze the potential impact of the Commission's new Part 32 and Part 36 rules on the USF expense adjustment. That task force found that the Commission's new Part 32 accounting and Part 36 separations rules may nullify the Commission's decision in the *NTS Recovery Order* to provide additional high cost assistance to smaller carriers. Using 1986 loop cost data from over 525 cost company study areas, and recasting the data to reflect the rule changes, the task force estimated that under the new rules, the overall size of the USF will increase by50 million. NECA predicted, however, that the additional assistance directed to some of the smaller Subset 2 companies will be reduced by over7.5 million and Subset 3 companies' assistance will be reduced by approximately1 million.

5. NECA states that although the task force's analysis is a reasonable representation of the impact of the new rules, the task force did not include several factors in its analysis. NECA submits that the task force did not include the impact of the Tax Reform Act of 1986, capital-to-expense shifts, and the use of Generally Accepted Accounting Principles (GAAP) because these items vary on a company-to-company basis. Because the task force did not consider these items in its analysis, NECA believes that the task force estimates may not reflect the actual 1988 loop costs recorded by the LECs. NECA maintains that because actual historical data have traditionally been the basis for any revisions of the USF expense adjustment calculation, and given the results of the task force's analysis, it and the Commission require additional time to determine the full impact of the rule changes on the USF expense adjustment. NECA states that if a Rule Making proceeding is required to adjust the loop cost algorithm or the expense adjustment algorithm, the Commission may need to devise a mechanism to continue the use of 1987 loop costs data as the basis for the USF expense adjustment. NECA states in reply comments that it is prepared to help the Commission develop such a mechanism.

6. All the parties that filed comments support NECA's petition, stating that additional time is needed for the Commission and the industry to analyze the impact of the new Parts 32 and 36 rules on the USF expense adjustment. GVNW states that small rural telephone companies that depend on the USF for much of their revenue are in a precarious position because of the uncertainties surrounding the rule changes and that additional time would allow evaluation of these changes. Williamson believes

that, under the new rules, current algorithms will not continue to provide the existing assistance to smaller companies. GTE and OPASTCO state that NECA's estimate of the impact of the rule changes on the USF does not reflect additional changes that are inherent in year end book costs, such as the 1986 Tax Reform Act, the capital-to-expense shifts, and the use of GAAP. Williamson, GTE, NTCA, Pacific, and OPASTCO believe that the additional sixty days would provide an opportunity for the Commission to revise the data collection rules and the loop cost algorithms if changes are needed to continue the assistance adopted by the Commission in its *NTS Recovery Order*. NTCA claims that additional time will help LECs plan or adjust if unforeseen USF expense adjustments occur. Pacific and TDS state that USF adjustment decisions should be based on actual data, rather than recast historical data because of the inherent subjectivity of this data. Williamson states that NECA's request will not have an adverse impact on any telephone carrier. GVNW, TDS, OPASTCO, and USTA state that, even though the May 1, 1989 date appears to allow sufficient time from the close of 1988 financial accounts to permit compliance by LECs, no carrier should be penalized if it tries, but fails, to meet the May 1 date.

7. USTA and Pacific agree with NECA that, in the event of a Rule Making proceeding to revise loop cost calculations or the USF expense adjustment, the Commission and the Joint Board should permit NECA to use 1987 costs as an interim procedure. TDS and GVNW say that if 1987 loop costs are used pending the outcome of a Rule Making, small carriers that upgrade their equipment should not be penalized. TDS and GVNW argue that, since a major upgrade can represent a significant impact on the financial composition of smaller companies, a mechanism should be provided for those companies to update their cost data on a study area basis to reflect investment costs for major upgrades.

8. In reply comments, NECA states that it believes all carriers should be able to meet the May 1 deadline and that it will provide assistance to companies that require it to meet the earlier deadline. NECA states in reply comments that a request for waiver of the Commission's expense adjustment calculation rules to institute an interim USF mechanism would be premature because it may not ultimately be required. NECA says it is prepared, however, to develop and submit a mechanism to compute USF expense adjustments for an interim period pending changes to the Commission's rules.

IV. DISCUSSION

9. We grant NECA's request for permission to require the submission on May 1, 1989, of USF data that would normally be submitted on June 30, 1989. The public interest would be served by affording NECA an opportunity to perform a study that will enable NECA to determine whether it wishes to propose any changes in current rules or procedures for Commission consideration. NECA should, of course, make the results of that study available to this Commission and to its members even if NECA ultimately decides to refrain from proposing any changes. We also note NECA's statement that it will provide assistance to carriers needing help in meeting the May 1 deadline for data submissions. We expect NECA to do so.

ORDERING CLAUSE

10. Accordingly, IT IS ORDERED, That NECA's petition for waiver of Section 36.611(a) of the Commission's Rules and Regulations IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] 47 C.F.R. Section 36.611(a).

[2] The following parties filed comments: the GTE Telephone Companies (GTE), the National Telephone Cooperative Association (NTCA), the United States Telephone Association (USTA), Pacific Bell and Nevada Bell (Pacific), the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), Telephone and Data Systems (TDS), and Fred Williamson and Associates, Inc. (Williamson). The following parties filed reply comments: GVNW Inc., (GVNW) and NECA. Although GVNW's reply comments are an unauthorized pleading, we will treat the GVNW reply as comments.

[3] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2935 (1987).

[4] *See* 47 C.F.R. Section 69.111(a) and 69.603(c).

[5] NECA states that this task force was established in June 1987 and consists of representatives of Subset 1, 2, and 3 LECs, USTA, NTCA, the National Rural Telephone Association, and OPASTCO, telephone industry consulting firms and NECA. Subset 1 companies are all the Bell System Operating Companies other than Cincinnati Bell and Southern New England Telephone Company. Subset 2 companies are all other telephone companies with annual operating revenues in excess of40 million. Subset 3 companies are all other telephone companies not included in the other two subsets.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-523

In re Applications of

BRYAN DAVIDSON (hereafter "Davidson")	File No. BPH-870917MG
CR BROADCASTING (hereafter "CR")	File No. BPH-870918ME
SAGA COMMUNICATIONS OF ILLINOIS, INC. (hereafter "Saga")	File No. BOH-870918MS
DANIEL S. STRATEMEYER (hereafter "Stratemeyer")	File No. BPH-870918MZ

For Construction Permit for
a New Non-commercial FM Station
on Channel 271B, Mt. Vernon, Illinois.

ERRATUM

Released: February 16, 1989

The above captioned Hearing Designation Order listed the applicant filing application number BPH-870918MS as Saga Communications. The proper name of the applicant is Saga Communications of Illinois, Inc.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-752

In the Matter of

AMERICAN TELEPHONE
AND TELEGRAPH
COMPANY

Provision of Network Channel
Terminating Equipment for Group
and Supergroup Services

REPORT AND ORDER

Adopted: January 27, 1989; Released: February 16, 1989

By the Commission:

I. BACKGROUND

1. This proceeding was instituted to determine whether detariffing of analog Network Channel Terminating Equipment (NCTE) used in conjunction with group and supergroup services is in the public interest. Group and supergroup facilities are analog channels with nominal bandwidths of 48 and 240 kHz, respectively, that can be used to carry bundles of up to 12 and 60 nominal 4 kHz voice channels, respectively, to transport a variety of types of signals. In 1983, this Commission had required American Telephone and Telegraph Company (AT&T) to offer group and supergroup facilities to other common carriers (OCCs) and the general public.[1] We then initiated this investigation to examine the provision of analog NCTE in connection with these services.[2]

2. Certain circumstances affecting this proceeding occurred after we received comments and reply comments in 1983. For example, on January 1, 1984, divestiture of the Bell System occurred, with the Bell Operating Companies (BOCs) retaining analog NCTE. [3] In addition, in 1987 this Commission eliminated the structural separation requirements for the provision of new digital NCTE,[4] and, in 1988, required that carriers detariff all embedded digital NCTE.[5] These decisions affect this investigation because in initiating it, this Commission had tentatively determined that the policy issues regarding analog NCTE were identical to those of digital NCTE, although the relevant technical issues might be different. Moreover, the focus of the investigation has shifted from AT&T to the BOCs since divestiture.

3. Because the previous record in this docket did not contain sufficient information to determine the effect of these intervening events upon any final determination as to the detariffing of analog group and supergroup NCTE, on April 13, 1988, the Common Carrier Bureau released an *Order Soliciting Further Comments* in this proceeding.[6] That Order solicited additional comments focusing on matters such as the extent of subscriber use of analog NCTE, the market for it, unique technical features of analog NCTE, and cost issues. Bell Atlantic, Pacific Bell and Nevada Bell (Pacific), New England Telephone and Telegraph Company and New York Telephone Company (NYNEX), the Ameritech Operating Companies (Ameritech), Southwestern Bell Telephone Company (Southwestern), and BellSouth Corporation, South Central Bell Telephone Company, and Southern Bell Telephone and Telegraph Company (BellSouth) filed comments. Reply comments were filed by the Independent Data Communications Manufacturers Association, Inc. (IDCMA). In this Order, we find that there is no practical benefit to be gained by detariffing analog Network Channel Terminating Equipment, and we terminate this proceeding.

II. SUMMARY OF PLEADINGS

4. All the parties agree that this Commission should not deregulate analog NCTE used with group and supergroup services because the cost of deregulating this equipment would outweigh the benefits. *See, e.g.*, Bell Atlantic Comments at 1; Pacific Comments at 4. They agree that the market for analog group and supergroup NCTE is small and growing smaller. *See, e.g.*, IDCMA Reply Comments at 2; Southwestern Comments at 2. Many of the parties observe that group and supergroup services have been largely replaced by fiber and digital facilities. *See, e.g.*, Bell Atlantic Comments at 1; NYNEX Comments at 2. Ameritech and BellSouth also maintain that analog NCTE used in conjunction with group and supergroup services is not a good candidate for deregulation because it is individually designed and subject to wide variations. Ameritech Comments at 4; BellSouth Comments at 4-5.

5. While IDCMA has no objection to the termination of this proceeding, it does object to the carriers' claims that NCTE used with group and supergroup services must remain regulated because of the unique nature of each of the facilities. IDCMA Reply at 4-5. With that caveat, IDCMA agrees that there is no longer any practical benefit to be gained by deregulating analog NCTE used with group and supergroup services. *Id.* at 6.

III. DISCUSSION

6. In the *Eighth Report and Order* in the Second Computer Inquiry, we stated our intent to detariff all customer premises equipment for which there is a competitive market. However, we recognized that leaving certain equipment under regulation can provide a greater public benefit than detariffing it if there is very little of that type of equipment on the market, the equipment is obsolete, and no competitive market for the equipment exists.[7] In its *Order Soliciting Further Comments*, the Bureau reiterated those concerns with respect to analog NCTE. The Bureau then asked parties to tell the Commission how much analog group and supergroup NCTE is presently on the market and whether a competitive market for this equipment exists. The Bureau also asked parties to consider the cost of developing interface standards necessary to implement the detariffing of analog NCTE used with group and supergroup services.[8]

7. As noted above, all the parties responding to the *Order Soliciting Further Comments* agree that the amount of analog group and supergroup NCTE that still exists is small and that this equipment has largely become ob-

solete. Furthermore, they agree that there is no competitive market for analog group and supergroup NCTE, and that the costs of deregulating it far outweigh the benefits. On the basis of the policies and standards contained in the *Eighth Report and Order* and the factual information before us, we find that it would not be in the public interest to deregulate analog group and supergroup NCTE. Deregulation of this small amount of largely obsolete equipment would entail lengthy and costly procedures to develop technical interface standards and protection criteria. Our equipment registration rules, which apply to deregulated equipment interconnected to the network, require such standards and criteria to protect the network from harm. We do not believe that the public interest would be served by pursuing such a course because the demand for this equipment is small, and diminishing.

IV. ORDERING CLAUSE

8. Therefore, IT IS ORDERED that the investigation in CC Docket No. 83-752 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] American Telephone and Telegraph Company, Offer of Facilities to Other Common Carriers, Docket No. 21499, 92 FCC 2d 1216 (1983), *recon. denied*, FCC 83-550, released Dec. 12, 1983.

[2] American Telephone and Telegraph Company, CC Docket No. 83-752, Mimeo No. 4821, released June 20, 1983.

[3] United States v. American Tel. & Tel. Co., 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[4] Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86-79, 2 FCC Rcd 143 (1987), *recon.*, 3 FCC Rcd 22 (1987).

[5] Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), CC Docket No. 81-893, 3 FCC Rcd 477 (1988) (*Eighth Report and Order*).

[6] American Telephone and Telegraph Company, CC Docket No. 83-752, 3 FCC Rcd 2116 (1988) (*Order Soliciting Further Comments*).

[7] *Eighth Report and Order* at para. 16.

[8] *Order Soliciting Further Comments*, 3 FCC Rcd at 2117.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
C2-165

Adopted: February 2, 1989; Released: February 16, 1989

Mr. Vassie G. Balkcum
President/General Manager
Eastern Carolina Broadcasting Company, Inc.
914 W. Grantham Street
P.O. Box 207
Goldsboro, NC 27530

Dear Mr. Balkcum:

This refers to your application for renewal of license of stations WGBR-AM and WEQR-FM, Goldsboro, North Carolina and a petition to deny filed by the North Carolina State Conference of Branches of the NAACP, the Wayne County Branch of the NAACP and the National Black Media Coalition. Subsequent to the filing of the petition to deny, the petitioners withdrew the petition and asked the Commission to renew your licenses. Notwithstanding the withdrawal of the petition to deny, we must review the stations' EEO program and performance pursuant to our authority under Section 309(a) of the Communications Act of 1934. Based upon this review, we have determined that your licenses should be renewed for less than a full-term, subject to periodic reporting conditions. In addition, this letter constitutes a Notice of Apparent Liability for a forfeiture issued pursuant to Section 503 of the Communications Act of 1934.

Section 73.2080 of the Commission's Rules requires that a broadcast licensee refrain from employment discrimination and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When determining whether a license merits renewal, the Commission evaluates the licensee's efforts to implement its affirmative action program by reviewing: (1) the composition of the station's workforce against the composition of the local labor force; (2) the record of the station's EEO program and policies, including recruitment and promotion data; and (3) EEO complaints, if any, filed against the station or licensee. In the absence of discrimination, our primary concern is the broadcaster's EEO efforts. When the evidentiary record indicates that the licensee is complying with our EEO rules and policies, the pending application is granted if otherwise appropriate. When the evidence indicates noncompliance by licensees, we impose prospective sanctions such as the submission of periodic progress reports and/or renewal for less than a full term. We may also impose a monetary forfeiture in more serious cases. Where appropriate, we may, in our descretion, simply issue warnings. *In Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services*, 2 FCC Rcd 3967 (1987). (*Broadcast EEO*).

The initial review of your application revealed a significant underrepresentation of Blacks on the station's upper-four staff in 1987 and 1988. In addition, from 1981 to 1987, the percentage of Black employees overall at the stations declined from 23.5% to 4.3%. At the same time, the percentage of Blacks in the upper-four positions declined from 21.4% to 0.0%. The Black composition of the Wayne County, North Carolina labor force is 29.0%, making the processing guideline, which is 50% of parity, 14.5%.

Your application indicated that, in 1988, three (15.0%) of 20 full-time employees and one (5.5%) of 18 upper-four employees are Black. We note, however, that while there has been a consistent overall increase in station size from 17 in 1981 to 23 in 1987, the number of Black employees declined during the license term. In 1981, four of 17 full-time employees (23.5%) and three of 14 upper-four employees (21.4%) were Black. In 1982, the number of Black employees declined to three of 16 full-time employees (18.7%) and two of 13 upper-four employees (15.3%). In 1983, three of 17 full-time employees (17.6%) and two of 14 upper-four employees (14.2%) were Black. The number of Black full-time employees declined further still to two of 19 full-time employees (10.5%) and one of 16 upper-four employees (6.2%) in 1984, two of 20 full-time employees (10.0%) and one of 18 upper-four employees (5.5%) in 1985, two of 21 full-time employees (9.5%) and one of 19 upper-four employees (5.2%) in 1986, and one of 23 full-time employees (4.3%) in 1987. In 1987, none of the station's 21 upper-four employees were Black.

The stations' EEO program revealed 14 hiring opportunities between July 30, 1987 and August 1, 1988, for which there were only three minority referrals. Two of the 14 hires were minorities (one of whom was a minority, hired for a position in an upper-four job category). Finally, in the self-evaluation portion of the EEO program, you stated that the stations' rural location makes them less desirable to applicants who would prefer to live and work in a larger market. Because this record raised questions about your EEO efforts, we mailed you a letter of inquiry.

Your response to our inquiry shows that while there were many hiring opportunities during 1985 (10), 1986 (17), and 1987 (19), minorities were not selected for any positions. Your updated information shows that during 1988, of 16 employees hired, four were Black. Two of these Blacks, however, were hired subsequent to the filing of your renewal application. Also, we note, that one Black female receptionist was employed only from June to August 1988; one Black male announcer is employed only part-time; and since 1985, no Black employees were hired until May 1988 - late in the license term. Also, you could not document the applicant pool for each position. Therefore, we cannot conclude that minorities were considered for each position.

As for recruitment, the record before us suggests that only sporadic efforts were made to apprise potential sources of Black applicants when full-time positions were available. You provide no information as to which sources were contacted for each specific vacancy. Where the race of the applicants was known, minority applications were either unsolicited or the referral source was cited as unknown, with the exception of a Black female hired in 1988 and an Hispanic female considered for a position in 1987, for whom the publications *Scope* and

Radio & Records, respectively, were listed as the referral source. This is consistent with the licensee's admission in its response that not all minority referral sources were contacted for every job opening.

While the pattern of declining minority representation alone does not raise a substantial and material question of intentional discrimination, it does indicate that you did not engage in an on-going self-assessment of your EEO program. The decline in the numbers of Black employees between 1981 and 1987, the absence of minority hires and apparent efforts from 1985 through 1987 shows a substantial lack of attention to your affirmative responsibility. We therefore conclude that the stations' license renewal applications should be granted for less than a full license term, subject to reporting conditions. Further, the stations' record, as noted above, evidences that there were repeated failures to comply with the Commission's affirmative action provisions set forth in Section 73.2080 (b)(3) and (5) and 73.2080 (c)(3) and (5) of the rules. Although you claim that the stations pursued an affirmative action program throughout the license term, review of the data indicates that the stations' EEO efforts were inadequate for most of the license term. Moreover, the stations' records reveal only small improvement at the end of the period. Accordingly, in addition to a short-term grant of the licenses subject to reporting conditions, we also find it appropriate to impose a forfeiture of7,000 for past rule violations.

Accordingly, IT IS ORDERED that the applications of Eastern Carolina Broadcasting Company, Inc. for renewal of license of stations WGBR and WEQR ARE GRANTED, for less than a full-term, ending three years from the release date of this letter subject to the reporting conditions specified herein.[1]

IT IS FURTHER ORDERED, That, pursuant to Section 503 of the Communications Act of 1934, as amended, Eastern Carolina Broadcasting Company, Inc., is hereby advised of its apparent liability for forfeiture of7,000 for its reported failures to comply with Section 73.2080 of the Commission's Rules in the manner described above.

IT IS FURTHER ORDERED That, you are directed to submit an original and one copy of the following information on December 1, 1989 and December 1, 1990:

(a) For the December 1, 1989 report, a list of all job vacancies during the twelve months preceding November 1, 1989 and for the December 1, 1990 report, a list covering the period November 1, to October 31, 1990, indicating the job title and full or part-time status of the position, the race or national origin, sex and the referral source of each applicant for each job and the race or national origin and sex of the person hired (such a list might start: (1) D.J., part-time, white female, A.W.R.T.; white male, newspaper; black male, Urban League -selected white female);

(b) a list of employees as of the November 1, 1989 payroll period for the first report and as of the November 1, 1990 payroll period for the second report, by job title, indicating part-time or full-time status (ranked from the highest paid to the lowest paid), FCC Form 395-B classification, date of hire, sex and race or national origin; and

(c) details concerning the stations' efforts to recruit Blacks for each position filled during the periods specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment.

In addition, you may submit any information you believe relevant with regard to the stations' EEO performance and to your efforts thereunder. The reports are to be filed with the Secretary of the Commission to the attention of the Mass Media Bureau's EEO Branch. Should you have any questions regarding this action or require further information concerning the employment reports, you may call the Mass Media Bureau's EEO Branch (202-632-7069). In regard to the forfeiture proceeding, you may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this letter. Any comments relating to your ability to pay should include those financial items set forth in the noted attachment.

BY DIRECTION OF THE COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] In this regard, we are mindful of an assignment of license of Eastern Carolina Broadcasting Company, Inc., to New Age Communications Limited Partnership, and we intend that the reporting conditions should apply to the assignee upon the consummation of the sale.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-25

In the Matter of

Amendment of Section 73.202(b),	RM-6570
Table of Allotments,	RM-6587
FM Broadcast Stations.	RM-6646
(Algona, Forest City and Osage, Iowa)	

NOTICE OF PROPOSED RULE MAKING
AND
ORDERS TO SHOW CAUSE

Adopted: January 24, 1989; Released: February 17, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it three mutually exclusive petitions for rule making. Osage Broadcasting Company (OBC) requests the substitution of Channel 224C2 for Channel 224A at Osage, Iowa, and the modification of its license for Station KOSG to specify the higher powered channel. In addition, OBC requests the substitution of Channel 297A for Channel 224A at Algona, Iowa, and the modification of KLGA, Incorporated's (KLGA) license for Station KLGA to specify the alternate Class A channel. OBC states that it will apply for Channel 224C2, if allotted to Osage, and reimburse KLGA for the reasonable costs associated with the change in channel.

2. KLGA, on the other hand, requests that its Algona station be upgraded from Channel 224A to Channel 224C2 and that the license of OBC's Station KOSG be modified to specify operation on Channel 225A in lieu of its present Channel 224A. KLGA also states its intention to apply for Channel 224C2, if allotted to Algona, and its willingness to reimburse OBC for the reasonable costs associated with the change in channel. KLGA submits that upgrading its station would allow it to increase service from its present 20,809 persons to approximately 79,344 persons. In addition, it states that Algona is the county seat of Kossuth County and the hub of the largely rural surrounding area.

3. Finally, Pilot Knob Broadcasting (Pilot Knob), licensee of Station KIOW, Forest City, Iowa, requests the substitution of Channel 297C2 for Channel 272A at Forest City, Iowa, and the modification of its license to specify the non-adjacent higher powered channel.

4. We believe the public interest would be served by seeking further comments on these proposals. Since Osage and Algona are separated by less than the 190 kilometers required for co-channel Class C2 allotments, and Forest City and Algona are separated by less than the required 163 kilometers for co-channel Class A and C2 allotments, these three proposals must be comparatively considered. In order to make a determination as to which proposal would better serve the public interest, we are providing the proponents with an opportunity to demonstrate why its community should receive the higher class allotment. In this regard, the parties should be guided by the criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). In particular, the parties should submit a gain area study showing the population and square miles of the increased area to be served. *See, Greenup, Kentucky, and Athens, Ohio*, 2 FCC Rcd 4319 (1987), for the methodology to be used in these studies.

5. Channel 224C2 or Channel 225A can be allotted to Osage in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station KOSG. Channel 224C2 or Channel 297A can be allotted to Algona in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station KLGA. Channel 297C2 can be allotted to Forest City in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.0 kilometers (13.7 miles) south to avoid a short-spacing to Station KROC-FM, Channel 295C, Rochester, Minnesota, and to the proposed allotment of Channel 298C2 to Faribault, Minnesota (MM Docket 88-259, 3 FCC Rcd 370 (1988)).[1]

6. As requested, we alternatively propose to modify either OBC's license for Station KOSG at Osage, Iowa, to specify operation on Channel 224C2 or KLGA's license for Station KLGA at Algona, Iowa, and Pilot Knob's license for Station KIOW at Forest City, Iowa, to specify operation on Channel 224C2 and Channel 297C2, respectively. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 224C2 at either Osage or Algona or require OBC or KLGA to demonstrate the availability of an additional equivalent channel for use by such interested parties, since the proposals are for adjacent channel upgrades. Pilot Knob, however, requests a non-adjacent channel upgrade. Therefore, its license for Station KIOW cannot be modified herein if there is a competing expression of interest unless there is an additional equivalent class channel available at Forest City.

7. Accordingly, we seek comments on the alternative proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
	OPTION I	
Algona, Iowa	224A	297A
Osage, Iowa	224A	224C2
	OPTION II	
Algona, Iowa	224A	224C2
Osage, Iowa	224A	225A
Forest City, Iowa	272A	297C2

8. Accordingly, IT IS ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, That KLGA, Incorporated, licensee of Station KLGA, Algona, Iowa, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 297A as proposed herein instead of its present

Channel 224A, and Osage Broadcasting Company, licensee of Station KOSG, Osage, Iowa, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 225A as proposed herein instead of its present Channel 224A.

9. Pursuant to Section 1.87 of the Commission's Rules, KLGA, Incorporated and Osage Broadcasting Company may, not later than **April 10, 1989,** file a written statement showing with particularity why their licenses should not be modified as proposed in the *Order to Show Cause*. The Commission may call on KLGA Incorporated and/or Osage Broadcasting Company to furnish additional information. If KLGA, Incorporated or Osage Broadcasting Company raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date refered to above, KLGA, Incorporated and/or Osage Broadcasting Company will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

10. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensees of Station KLGA and Station KOSG as follows:

KLGA Incorporated
Radio Station KLGA
Algona, Iowa 50511

Osage Broadcasting Company
Radio Station KOSG
202 North Seventh Street
Osage, Iowa 50461

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

12. Interested parties may file comments on or before **April 10, 1989,** and reply comments on or before **April 25, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Al Penfold
President, Osage Broadcasting Company
Box 180
Osage, Iowa 50461
(Petitioner for Osage)

John R. Wilner, Esq.
Bryan, Cave, McPheeters & McRoberts
1015 - 15th Street, N.W., Suite 1000
Washington, D.C. 20005
(Counsel to KLGA, Algona)

Tony Coloff
President, Bald Knob Broadcasting
P.O. Box 308
Forest City, Iowa 50436
(Petitioner for Forest City)

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

14. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment

is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channels 224C2 and 225A at Osage are North Latitude 43-19-20 and West Longitude 92-51-22. The coordinates for Channels 224C2 and 297A at Algona are North Latitude 43-04-05 and West Longitude 94-12-08. The coordinates for Channel 297C2 at Forest City are North Latitude 43-04-35 and West Longitude 93-35-55.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-198

In the Matter of

Amendment of Section 73.202(b), RM-6313
Table of Allotments,
FM Broadcast Stations.
(Harbeck- Fruitdale, Oregon)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 25, 1989; Released: February 17, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Carl Wilson (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 2801 (1988), proposing the allotment of Channel 252A to Harbeck-Fruitdale, Oregon, as the community's first local FM service. Petitioner filed comments reiterating his intention to apply for the channel, if allotted. No other comments were received. Channel 252A can be allotted to Harbeck-Fruitdale in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. We believe the public interest would be served by allotting Channel 252A to Harbeck-Fruitdale, Oregon, since an interest has been expressed in providing the community with its first local FM service. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 3, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Harbeck-Fruitdale, Oregon	252A

3. The window period for filing applications will open on **April 4, 1989,** and close on **May 4, 1989.**

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 42-24-53 and West Longitude 123-19-53.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-29

In the Matter of

Amendment of Section 73.202(b), RM-6548
Table of Allotments,
FM Broadcast Stations.
(Refugio, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 1989; Released: February 17, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Sound Leasing, Inc. (petitioner), licensee of Station KZTX(FM), Channel 292A, Refugio, Texas, the Commission considers herein a petition for rule making seeking the substitution of Channel 291C2 for Channel 292A at Refugio. Petitioner also seeks the modification of its license to specify operation on the higher class co-channel, in order to provide Refugio with its first wide coverage area FM service. Petitioner submitted information in support of its proposal and states its intention to construct the new station.

2. The channel substitution can be made consistent with the Commission's minimum separation requirements.[1] Concurrence of the Mexican government is required since Refugio is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

3. As requested, we shall propose to modify the license of Station KZTX(FM) to specify operation on the higher class co-channel, Channel 291C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Refugio.

4. The Commission believes it is in the public interest to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Refugio, Texas	292A	291C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 10, 1989**, and reply comments on or before **April 25, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Christopher J. Reynolds, Esquire
Peper, Martin, Jensen,
Maichel and Hetlage
1401 New York Ave., N.W.
Washington, D. C. 20005
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The city reference coordinates are 28-18-18 and 97-16-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-30

In the Matter of

Amendment of Section 73.202(b), RM-6419
Table of Allotments,
FM Broadcast Stations.
(Floresville and Pearsall, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 1989; Released: February 17, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Alfonso Bazan Gonzalez, d/b/a Wilson County Broadcasting Company (petitioner), licensee of Station KWCB(FM), Channel 232A at Floresville, Texas, proposing the substitution of Channel 231C2 for Channel 232A at Floresville and the modification of its license to specify the new channel. In order to accomplish this substitution, petitioner also suggests the substitution of Channel 281A for vacant but applied for Channel 231A at Pearsall, Texas.[1] Petitioner states its intention to upgrade its facilities upon grant of the proposal. The proposal could provide the community with a first wide coverage area FM service.

2. Channel 231C2 can be allotted to Floresville in compliance with the Commission's minimum distance separation requirements with a site restriction, if the channel substitution (Channel 281A for Channel 231A) is made at Pearsall. A 0.7 kilometer (0.4 mile) site restriction is required to avoid a short spacing to Station KAPT(FM), Channel 234C, Luling, Texas. Petitioner indicates a desire to relocate its current transmitter site 27.9 kilometers (17.4 miles) west of Floresville.[2]

3. Since the communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border, we must obtain concurrence of the Mexican government for the proposal.

4. As requested, we shall propose to modify the license of Station KWCB(FM) to specify operation on Channel 231C2 in lieu of Channel 232A in accordance with Section 1.420(g) of the Commission's Rules. Therefore, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Floresville. The applicants for Channel 231A at Pearsall will be permitted to amend their applications to specify Channel 281A, if allotted, and retain cut-off protection, since the class of channels are equivalent.

5. In view of the fact that Floresville, Texas, could receive its first wide coverage area FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No. Present	Proposed
Floresville, Texas	232A	231C2
Pearsall, Texas	231A, 237A	237A, 281A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 10, 1989,** and reply comments on or before **April 25, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Gene A. Bechtel, Esquire
Howard W. Simcox, Jr., Esquire
Bechtel, Borsari, Cole
& Paxson
2101 L Street, N.W.
Suite 502
Washington, D. C. 20037
(Counsels for petitioner)

8. IT IS ORDERED, That the Secretary of the Commission SHALL SEND A COPY of this *Notice* BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED to the following: Diane Grove, 201 S.W. Parkway 10205, Lewisville, Texas 75067 and John W. Barger, 3210 Goldsboro, San Antonio, Texas 78230.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the

other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service*. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies*. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings*. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Channel 231A was allotted to Pearsall, Texas, in MM Docket No. 84-231. Our records currently reflect two applications pending for the use of the channel, BPH-880715NA filed by Diane Grove and BPH880830MA filed by John W. Barger.

[2] The restricted site coordinates are 29-13-34 and 98-25-55.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-31

In the Matter of

Amendment of Section 73.202(b), RM-6479
Table of Allotments,
FM Broadcast Stations.
(Comfort, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 1989; Released: February 17, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Comfort Broadcasting Company, Inc. (petitioner) the Commission has before it for consideration a petition for rule making requesting the allotment of Channel 236C2 to Comfort, Texas, as that community's first local FM service. Petitioner states if the allotment is made it will apply for the channel.

2. Channel 236C2 can be allotted to Comfort consistent with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) west of the city. The restricted site is necessary in order to avoid a short spacing to Station KAPT(FM), Channel 234C, Luling, Texas.

3. Since Comfort is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence must be obtained from the Mexican government for the allotment.

4. In view of the fact that Comfort, Texas, could receive its first local FM channel the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Comfort, Texas	---	236C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 10, 1989,** and reply comments on or before **April 25, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Christopher J. Reynolds, Esquire
Peper, Martin, Jensen,
Maichel and Hetlage
1401 New York Avenue, N.W.
Washington, D. C. 20005
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment

is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-32

In the Matter of

Amendment of Section 73.202(b), RM-6454
Table of Allotments,
FM Broadcast Stations.
(Fort Smith and Clarksville,
Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 1989; Released: February 17, 1989

By the Deputy Chief, Policy and Rules Division:

1. George T. Hernreich (petitioner), licensee of Station KBBZ-FM, Channel 265A, Fort Smith, Arkansas, has filed a petition for rule making seeking the substitution of Channel 264C2 for Channel 265A and modification of his license to specify operation on Channel 264C2. Petitioner states that adoption of his proposal will enable him to provide expanded service to Fort Smith and surrounding areas.

2. A staff analysis of petitioner's proposal reveals that proposed Channel 264C2 at Fort Smith is short spaced to Channel 263A at Clarksville, Arkansas,[1] for which one application is pending. The distance between the two communities is 80.6 kilometers, whereas 105 kilometers is required between first adjacent Class A and C2 channels.[2] In an effort to accommodate each proposal, we have determined that Channel 295A may be substituted for Channel 263A at Clarksville, provided the transmitter is located in an area at least 9.3 kilometers (5.8 miles) east [3] of the community.

3. We believe that this proposal warrants consideration in view of the expressed desire for a wider coverage area FM station to serve the public interest at Fort Smith. A staff engineering analysis has verified that Channel 264C2 can be substituted for Channel 265A at the site specified in petitioner's proposal in conformity with the minimum distance separation requirements contained in Section 73.207(b) of the Commission's Rules, provided that Channel 295A is substituted for Channel 263A at Clarksville, as set forth above.

4. In light of the foregoing, we propose to substitute Channel 264C2 for Channel 265A at Fort Smith, Arkansas, and to substitute Channel 295A for Channel 263A at Clarksville, Arkansas. As requested, we also propose to modify the Class A license of Station KBBZ-FM to specify operation on Channel 264C2. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 264C2 at Fort Smith.

5. As indicated above, although the Fort Smith proposal conflicts with the pending application for Channel 263A at Clarksville, Commission policy regards an applied for but unauthorized transmitter site as a preference for a particular location, and absent a showing that use of the preferred site would better serve the public interest, would favor the provision of a new service, such as proposed at Fort Smith. Thus, we shall serve a copy of this *Notice* on the applicant for Channel 263A at Clarksville, Arkansas, in order to elicit its comments on the proposal. In the event the channel allotment at Fort Smith, Arkansas, should change prior to the issuance of a permit for Channel 263A at Clarksville, the applicant will be permitted to amend his application to specify the newly allotted channel without loss of cut-off since no upgrade in the class of channel will result. *See, Salamanca, NY and Bradford, PA*, 50 FR 26208 and *Sanibel, FL*, 50 FR 32706 (1985).

6. Accordingly, in order to provide Fort Smith with an additional expanded coverage FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
Clarksville, Arkansas	224A, 263A	224A, 295A
Ft. Smith, Arkansas	229C, 256C, 260C, 265A	229C,256C, 260C, 264C2

7. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the applicant for Channel 263A at Clarksville, Arkansas, as follows:

J. L. Richardson
P. O. Box 37
Clarksville, AR 72830

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **April 10, 1989,** and reply comments on or before **April 25, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows: consultant, as follows:

Jacob W. Mayer, Esq.
Farrow, Schildhause & Wilson
1730 M St., N.W., Suite 708
Washington, D.C. 20036

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Channel 263A was allotted to Clarksville in MM Docket No. 87-73 (recon. pend.). During the window filing period for Channel 263A, an application was filed by J. L. Richardson (File No. 881017MI).

[2] Reference coordinates used in this determination are those of the petitioner's specified site for Channel 264C2 at Fort Smith at 35-13-26 and 94-21-30, while those for the application on Channel 263A at Clarksville are 35-33-03 and 93-33-58.

[3] Reference coordinates at the restricted site are 35-28-34 and 93-21-41.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-584

In re Applications of

FAIRMONT BROADCASTING COMPANY — File No. BPH-870309MC

For Construction Permit for a
New FM Station on Channel 232A
in Fairmont, West Virginia

Appearances

David M. Hunsaker and *Cary S. Tepper*, on behalf of Fairmont Broadcasting Company, and *Jerry M. Hermele*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF
ADMINISTRATIVE LAW JUDGE
JOHN M. FRYSIAK

Issued: February 10, 1989; Released: February 17, 1989

PRELIMINARY STATEMENT

1. The *Hearing Designation Order* (HDO), DA 87-1873, released January 22, 1988, designated an air hazard issue against Fairmont Broadcasting Company (FBC), one of three mutually-exclusive applicants. By *Memorandum Opinion and Order*, FCC 88M-565, released March 1, 1988, the Presiding Officer granted the Joint Request for Approval of Settlement, filed February 19, 1988, dismissed the applications of Fairmont Community Broadcasters and Joseph Capobianchi, d/b/a/ J.C. Broadcasting, the application of Fairmont Broadcasting Company remaining in hearing status pending the resolution of the designated hearing issue.

2. On February 1, 1989, FBC filed a Motion for Summary Decision and grant on the designated air hazard issue. Previously filed was an amendment, together with its supplements, which reflects a change of transmitter site. FBC's newly proposed site will be colocated with the transmitter of WMNN(AM), Fairmont, West Virginia. FBC will mount its antenna on the existing Number 1 Tower of WMNN. The Mass Media Bureau has reviewed FBC's proposed amendment and its supplements and states that FBC's proposal complies with the Commission's technical requirements provided that a grant to FBC of a construction permit be conditioned as noted below.

3. Good cause exists for acceptance of the proposed amendment with its supplements. Acceptance of the amendment would eliminate the need for hearing on the outstanding air hazard issue and public interest will be served by the early grant of FBC's application, the termination of this proceeding, and the commencement of long-overdue FM service to the community of Fairmont.

4. With the acceptance of the amendment as supplemented, there is now no impediment to the grant of FBC's application, the only qualifying issue specified against it, namely the air hazard issue, is now moot.

Accordingly, IT IS ORDERED that the Petition for Leave to Amend, filed December 16 1988, and supplemented on December 23, 1988 and January 13, 1989, IS GRANTED, and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the Motion for Summary Decision, filed February 1, 1989, IS GRANTED, and the air hazard issue IS RESOLVED in Fairmont Broadcasting Company's favor.

IT IS FURTHER ORDERED, that, unless an appeal from this Summary Decision is taken to the Commission or the Commission reviews this Summary Decision on its own motion in accordance with Section 1.276 of the Rules, the application of Fairmont Broadcasting Company to construct and operate a new FM Station on Channel 232A at Fairmont, West Virginia IS GRANTED and this proceeding IS TERMINATED.[1]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

FOOTNOTE

[1] In the event exceptions are not filed within 30 days after the release of this Summary Decision and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1
Phase II

In the Matter of

Motion for Stay of
BellSouth Telephone Companies

Annual 1988 Access Tariff Filings

ORDER

Adopted: February 8, 1989; Released: February 17, 1989

By the Chief, Common Carrier Bureau:

1. On December 27, 1988, the Commission released an Order terminating the investigation in the above-captioned docket.[1] The *Phase II Order* directed various local exchange carriers (LECs) to remove a total of nearly 300 million in special access revenue requirements based on the Commission's determination that these revenue requirements were inaccurately or wrongly calculated. The *Phase II Order* suggested that the affected carriers make these disallowances in one of three ways: by revising their 1988 access tariffs for the remainder of the access year (through March 31, 1989); by revising their proposed 1989 access tariffs (which were filed on December 30, 1988); or by making refunds.

2. The *Phase II Order* established filing dates which were subsequently changed as follows: carriers electing to revise their 1988 access tariffs were to submit revisions on January 6, 1989; carriers electing to revise their 1989 access tariffs were to inform the Commission of this intention on January 6, and were to submit tariff revisions on January 31, 1989; carriers electing to make refunds were to inform the Commission of this intention on January 6, and to submit refund plans on January 31, 1989.[2]

3. In addition to the motions for extension of time that prompted the *January 6 Order*, we received motions for stay from Nevada Bell, Pacific Bell, and Southwestern Bell.[3] The Pacific Bell motion was resolved in the *January 6 Order*. The Nevada Bell motion, which is virtually identical to the Pacific Bell motion, was denied on the basis of that determination, in the *January 31 Order*.[4] The *January 31 Order* similarly denied the Southwestern Bell motion.

4. On January 28, 1989, BellSouth Telephone Companies (BellSouth) filed a motion for stay that makes the same arguments previously rejected in the *January 6 Order* and the *January 31 Order*. The same resolution is therefore applicable to BellSouth's motion.

5. Accordingly, IT IS ORDERED that the motion for stay of the BellSouth Telephone Companies IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Memorandum Opinion and Order, FCC 88-420, released Dec. 27, 1988 (*Phase II Order*).

[2] Order on Extensions of Time, CC Docket No. 88-1, Phase II, DA 89-9, released Jan. 6, 1989 (*January 6 Order*).

[3] Nevada Bell Motion for Stay, filed Jan. 5, 1989; Pacific Bell Motion for Stay, filed Jan. 5, 1989; Southwestern Bell Motion for Stay, filed Jan. 6, 1989.

[4] The *January 6 Order* held that Pacific Bell had failed to demonstrate that it would suffer irreparable harm through meeting the January 6 filing requirement. *Id.* at para. 9.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-350

In the Matter of

Amendment of the Maritime
Services Rules to permit
noncommercial communications on
VHF channels 79 and 80.

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 1, 1989; Released: February 17, 1989

By the Commission:

I. INTRODUCTION

1. In a *Notice of Proposed Rule Making* (*NPRM*), released July 11, 1988, 3 FCC Rcd. 4288, the Commission proposed to amend Section 80.373 of its Rules, 47 C.F.R. § 80.373, to permit noncommercial vessels to share the maritime commercial channels 79 and 80 on a nationwide basis. This *Report and Order* adopts final rules that modify the proposal by limiting the shared use of VHF channels 79 and 80 by commercial and noncommercial vessels and private coast stations to the Great Lakes.

II. BACKGROUND

2. Our action in adopting the *NPRM* was prompted by a letter from the Michigan Steelhead and Salmon Fisherman's Association (Association) which requested the Commission to provide two additional marine very high frequency (VHF) private communications channels for use by noncommercial or recreational vessels. The Association pointed out that there are 720,000 boats registered in Michigan alone and that VHF radio traffic on the Great Lakes during the boating season has become very congested.

3. Section 80.373(f) of the Commission's Rules, 47 C.F.R. § 80.373(f), lists the VHF channels in the 156-162 MHz band available nationwide for use by ships and private coast stations. There are currently thirteen channels for use by commercial vessels, three of which are for intership use only. There are currently six channels for use by noncommercial vessels, one of which is for intership use only. In the *Report and Order* in PR Docket No. 83-431, FCC 85-441, 50 FR 33942, (1985), we assigned channel 70 (156.525 MHz), which had previously been available for noncommercial use, for digital selective calling in accordance with international usage (RR No. 4681A). This action, while necessary, nevertheless exacerbated the shortage of noncommercial channels.

III. PROPOSAL

4. We agreed with the Association that boating areas with large numbers of recreational vessels experience considerable congestion, especially on weekends or on a seasonal basis. To determine the most appropriate maritime channels for sharing with noncommercial users, we conducted a computer search of our licensing records. The fewest number of stations were found to be licensed on commercial channels 79 (156.975 MHz) and 80 (157.025 MHz). Further, limited monitoring of these channels in the Great Lakes area during a Friday through Monday period revealed minimal commercial use.[1] Based on these findings we concluded that channels 79 and 80 could best accommodate this additional noncommercial usage.

5. Although the Association's request for additional noncommercial channels was limited to the Great Lakes, we proposed to make channels 79 and 80 available for noncommercial as well as commercial use nationwide. We did so based on informal reports and complaints to the staff over the years and on the fact that we have traditionally alloted VHF channels for private communications in the Maritime Services on a nationwide rather than regional basis. In doing so, however, we recognized that noncommercial use of these channels might negatively impact existing commercial users in certain areas and specifically requested comments on this matter.

IV. COMMENTS/DISCUSSION

6. With the exception of one commenter, the comments uniformly oppose making channels 79 and 80 available for noncommercial use on a nationwide basis.[2] The one commenter supportive of additional sharing, the Northern Pacific Marine Radio Council (NPMRC), suggests a regional rather than a national approach to this problem unless there was broad support in the comments for a national approach. In Puget Sound, the NPMRC suggests the use of channels 67 and 72 rather than 79 and 80 in light of the fact that the Washington State Ferries System and several tug companies have been using the latter frequencies for years.

7. The remaining comments generally oppose additional sharing. They cite specific geographic areas where additional sharing would particularly exacerbate commercial communications such as the New York Harbor area, New Orleans, the Mississippi River and the Intracoastal Waterways. *See e.g.*, comments of American Commercial Barge Line Company (ACBL) at 1, Mobile Oil Corporation (Mobil) at 2, and the American Waterway Operators, Inc. (AWO), at 1. Furthermore, those opposing nationwide sharing point out that recreational boaters tend to be less disciplined users of communications than commercial operators. Mobil also argues that the key to commercial communications is timeliness and that noncommercial use could cause a delay resulting in a missed tide, the inability to change cargo loading orders and a consequent loss of revenue. *See* Mobil comments at 2.

V. DECISION

8. Based on these comments, we are reluctant to adopt the rule amendments on a nationwide basis as proposed. It appears that additional sharing of commercial frequencies, to the degree it should be permitted, must be determined on a regional basis. Consequently, we conclude

that for purposes of this rule making we should restrict our consideration of additional sharing to the Great Lakes.

9. With respect to the Great Lakes, the Association has demonstrated a need for additional sharing based on the number of registered boats and the heavy recreational use of radio. Our licensing records indicate that channels 79 and 80 have the fewest number of commercial licensees assigned and, therefore, can best accommodate additional sharing with noncommercial users. Furthermore, none of the commenters specifically oppose the proposed additional sharing of channels 79 and 80 on the Great Lakes. As described above, the commenters generally oppose such sharing on a nationwide basis and cite other specific areas where commercial communications would be particularly exacerbated. For these reasons, we are adopting a rule to permit sharing of channels 79 and 80 only on the Great Lakes. [3]

10. Accordingly, we are amending Section 80.373(f) of the Commission's Rules to permit channels 79 and 80 to be used for both commercial and noncommercial communications in the Maritime Services on the Great Lakes. The proposed amendments are issued under the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i) and 303(r).

VI. PROCEDURAL MATTERS

11. The Rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retension requirements; and will not increase burden hours imposed on the public.

12. We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rule making proceeding because it will not have a significant economic impact on a substantial number of small entities. The rule allows noncommercial vessels and eligible private coast stations to voluntarily use these frequencies. As noted above, the licensing data available indicated that these frequencies appear to have the fewest commercial users assigned and can best accommodate sharing on the Great Lakes. We do not believe that a substantial number of small commercial entities will be substantially affected. This change should not have a substantial economic impact on the operations of small entities.

VII. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 80 of the Commission's Rules IS AMENDED, as set forth in Appendix A below, effective **April 3, 1989.**

14. IT IS FURTHER ORDERED that a copy of this *Report and Order* be sent to the Chief Counsel for Advocacy of the Small Business Administration.

15. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 80 - Stations in the Maritime Services

1. The authority citation for Part 80 continues to read as follows:

AUTHORITY: Secs 4, 303 48 Stat. 1066, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.373, paragraph (f) is revised to amend the noncommercial portion of the frequency table to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(f) * * *

* * * * *

		Noncommercial	
68.	156.425	156.425	
09.	156.450	156.450	
69.	156.475	156.475	
71.	156.575	156.575	
72.	156.625	. . . . .	Intership only
78.	156.925	156.925	
79.	156.975	156.975	Great Lakes only
80.	157.025	157.025	Do.

* * * * *

APPENDIX B

List of Commenters

American Commercial Barge Line Company
American Waterway Operators
American Institute of Merchant Shipping
Department of Transportation - State of Washington
Northern Pacific Marine Radio Council

National Party Boat Owners Alliance, Inc.
The Towboat & Harbor Carriers Association
of New York & New Jersey
Reinauer Transportation Companies
Weeks Marine
Dixie Carriers, Inc.,
Mobile Oil Corporation

FOOTNOTES

[1] The greatest usage of commercial channels occurs during the normal workweeks, Monday through Friday, while the greatest congestion on noncommercial channels occurs on weekends during the boating season.

[2] Appendix B contains a list of the commenters in this proceeding.

[3] The channels proposed for Puget Sound by NPMRC were beyond the scope of this proceeding and elicited no support or opposition in reply comments. We will further study this proposal and initiate another proceeding if appropriate.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PACIFIC BELL AND
NEVADA BELL

Plan for the Provision of
Electronic Messaging Services

MEMORANDUM OPINION AND ORDER

Adopted: February 7, 1989; Released: February 21, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On June 20, 1988, pursuant to the requirements of the *Computer III* proceeding,[1] Pacific Bell and Nevada Bell (Pacific) filed a Comparably Efficient Interconnection (CEI) plan (Plan) to offer Electronic Messaging Services. Electronic Messaging Services (EMS) "will support the creation, transmission and reception of electronic messages in a variety of formats . . . ."[2] The *Phase I Order* requires a Bell Operating Company (BOC) that wishes to offer an enhanced service on an integrated basis prior to its implementation of Open Network Architecture (ONA) to submit a service-specific CEI plan. The CEI plan must meet specific CEI requirements as well as other requirements pertaining to other nonstructural safeguards governing the use of CPNI, the disclosure of network information, and nondiscrimination reporting.[3] In this order we approve the Plan, subject to certain conditions.[4]

II. THE PLAN

A. Service Description

2. According to Pacific, the major application for EMS will be electronic mail. Other applications will include, but not be limited to: "electronic forms transfer, electronic document interchange, and electronic data interchange."[5] EMS will also supply format conversion, including: "text to hardcopy paper printout, text to voice, text to telex, and text to facsimile . . . ."[6]

3. Users would send messages to an EMS system, whether provided by Pacific or by a non-affiliated enhanced service provider (ESP), from their own CPE[7] under two alternatives: (a) via a direct connection to the Pacific Companies' Public Packet Switching Network (PPSN), and then to the EMS system, or (b) via a switched, voice grade, telephone connection in a Class 5 end office through PPSN to the EMS system. Under either alternative, the EMS system would be interconnected with PPSN by DDS private lines (9.6 kb/s or 56 kb/s).[8] Both PPSN and DDS service will be provided under state tariffs.[9] Upon delivery by the PPSN, the message would then either be immediately stored in a called party mailbox residing in the EMS system, or, if required, the message would undergo format conversion prior to storage.[10]

4. A called EMS subscriber would access the EMS system and query his or her electronic mailbox to (a) retrieve, delete, or redirect a message to another user, (b) reply to the message, or (c) use other features of the EMS. According to Pacific, "The equipment used by electronic mail providers, including the Pacific Companies, is physically separate and distinct from basic central office switching equipment."[11]

5. Charges for EMS will be based upon: "(1) the length of the message (*e.g.*, number of characters or lines), (2) a recurring subscriber/mailbox fee, and (3) usage of features such as priority delivery, electronic to hardcopy printout delivery, bulk mail, transfer of personal computer files, etc."[12] Pricing for customers who interconnect with private EMS systems will include a recurring interconnection fee as well as fees for message length and for special features (such as priority delivery and bulk mail) as described above.[13]

B. Positions of Parties

6. ADAPSO contends that Pacific's service description is vague and that, as a result, Pacific cannot demonstrate that it has satisfied its CEI obligations. ADAPSO claims that the plan "fails to define with any degree of precision the specific [EMS] services to which it applies."[14] ADAPSO urges us to require Pacific to remedy this purported defect by requiring "Pacific to define with specificity the individual electronic messaging services that it intends to provide."[15] ADAPSO also asserts that "a fair reading of Pacific's Plan suggests that it also intends to offer a number of information services that have not been authorized by the Court."[16] Finally, ADAPSO argues, as a consequence of these observations, "Pacific will have little incentive to comply with the Commission's ONA requirements."[17]

7. Pacific replies that ADAPSO has incorrectly interpreted the applicable Commission requirements. Pacific quotes from the *Phase I Order*:

> [The] CEI Plan must contain a short *general* description of the enhanced service offered to notify us of the utility and purposes of the CEI arrangements described in the Plan.[18]

C. Discussion

8. We reject ADAPSO's contention that Pacific's service description is not sufficiently detailed. Pacific's service description is sufficiently detailed for us to determine: (a) that EMS is an enhanced service; (b) some of the essential characteristics of that service; (c) the manner in which Pacific's enhanced service operation will use underlying basic services; and (given the preceding determinations) (d) the manner in which ESPs will be given interconnection to such basic services in compliance with the CEI requirements of *Computer III*.[19]

9. According to Pacific, its EMS affiliate will procure only two basic services from its parent: PPSN and DDS. These will be used to interconnect EMS customers, across a well defined regulatory boundary, with the hardware/software configuration that that the Pacific affiliate will use to provide the various EMS features as described in para. 2, *supra*. Since PPSN and DDS are existing,

tariffed services, there is little likelihood that competitors will not be able to provide equivalent enhanced services should they so desire.

10. Based on Pacific's description of EMS, we see no need, for CEI purposes, to require Pacific to specifically define each of the individual EMS services that it intends to provide. In approving Bell Atlantic's CEI plan for the provision of gateway services, we addressed a similar issue, stating, "There is no reason to require separate CEI plans for enhanced services that are provided as a package if a carrier demonstrates that the CEI requirements for those services comply with the Commission's CEI requirements."[20] We find in paras. 11-14, *infra* that Pacific's proposal satisfies our CEI requirements. Therefore, additional specificity of the nature of each of the EMS features is not necessary.

III. COMPLIANCE ISSUES

A. CEI Requirements

11. The *Phase I Order* lists nine CEI parameters that the Plan must satisfy. The only parameter that was the subject of specific comment was the minimization of transmission costs parameter, which was addressed by MCI.[21] In its Plan, Pacific states that because it "will pay the same tariffed rates for PPSN and DDS services as any other electronic messaging service provider, collocation of the Pacific Companies' system in the Central Office will not offer the Pacific Companies any cost advantages."[22]

1. Position of MCI

12. MCI claims that Pacific's proposal to charge its EMS operation the same tariffed rates as it charges others is "not equivalent to affirmatively reducing (and thus should not be seen as fulfilling the carrier's duty to lower) other firms' access and transport costs."[23] Pacific replies that we have specifically permitted "either distance-sensitive or flat-rate pricing for the transmission function."[24] Therefore, Pacific concludes, it has satisfied the CEI requirements and "there is no requirement to reduce the cost solely for CEI purposes."[25]

2. Discussion

13. Pacific's proposal to provide PPSN services to its EMS at the same rates as it would charge competitors is an adequate response to the CEI requirements pertaining to the minimization of transmission costs. The *Phase II Reconsideration Order* specifically found that pricing parity in access link pricing is an adequate response to this parameter.[26] The rates and charges for PPSN are set forth on Sheets No. 12-13 in Schedule Cal. P.U.C. Tariff No. B11 Public Packet Switching, which appears in Exhibit 1 of the Plan. None of the PPSN rate elements are distance-sensitive. The usage charges, for call set-up and call segments, depend upon transaction volume only. Other PPSN features (such as closed user groups, or permanent virtual circuits) are neither usage-based nor distance-based, but are billed as non-recurring and monthly recurring charges.

14. On the other hand, accordingly to Pacific's intrastate DDS tariff, DDS is billed at a flat rate within digital cities, and on a mileage zone basis between these cities. Interoffice channels are billed on a continuous air line mileage basis.[27] Pacific does not specify the manner in which it would bill itself for the mileage-based intercity and interoffice charges.[28] The *BOC ONA Order* notes that Pacific has not described how it will achieve pricing parity for its unbundled ONA offerings and requires it to amend its plan by May 19, 1989, to describe its banded pricing approach, if any, in greater detail.[29] For CEI purposes, Pacific must make such a clarification for the DDS service used for EMS by amending its plan by March 15, 1989.

B. Billing

15. According to the Plan, the EMS system, rather than the basic service network, would generate EMS billing data.[30] Pacific's basic service billing operation would use these EMS-generated data to prepare a bill to be appended to a customer's monthly telephone statement.[31] It further states that it will allocate the costs of the billing services provided by the regulated operation in accordance with the *Joint Cost Order*. Although Pacific intends initially to use its own systems for EMS billing, it does not preclude the use of an outside billing service should that option prove to be more cost-effective. Pacific does not commit itself to providing billing services to EMS competitors, but states that "[i]f the electronic messaging industry requires billing services, the Pacific Companies would be interested in evaluating [the economic feasibility of] providing billing services to competing electronic messaging providers."[32]

1. Positions of Parties

16. Five parties commented on this issue, claiming generally that Pacific should be required to provide billing and collection services to competing ESPs if it uses inhouse services provided by its basic service operations.[33] Some parties argue that the BOCs should make billing and collection services available to all ESPs under the same terms and conditions,[34] and that not to provide such services is discriminatory and anticompetitive.[35]

17. ADAPSO claims the Commission has the power to require Pacific to provide billing and collection, even though such services have been detariffed.[36] ANPA argues that Pacific would violate the terms of the *March 7 Order* if it were not to offer billing services on a nondiscriminatory basis.[37] Tymnet and MCI, citing the *Phase I Order*, claim that we have required the offering of billing as an unbundled network capability.[38]

18. Pacific replies that it is not required to offer billing services, or any other services that it offers to its enhanced service affiliate, under the CEI conditions. Bell Atlantic supports Pacific's position on the billing issue. According to Pacific, "the ability to identify the calling number, billing address, duration of call, etc. are the basic network capabilities which the BOCs may be required to provide."[39] The BOCs need only provide the necessary network data "so that third party enhanced service providers have the . . . information to prepare their bills."[40]

2. Discussion

19. The *BOC ONA Order* addresses the issue of billing and collection services under ONA, stating, "[a]lthough our Title I authority over the BOCs' billing and collection services is clear, since such activities are incidental to communications, we decline at this time to mandate that the BOCs offer these pursuant to the ONA requirements."[41] That order also addresses Pacific's remark in its

reply in this proceeding that BOCs could be required to provide the ESPs with information that would be useful for performing their own billing. The *BOC ONA Order* directs Pacific to explain its proposal in detail by May 19, 1989, and also directs the Information Industry Liaison Committee to consider the means of providing such information.[42] For purposes of this proceeding, we note that Pacific does not state the relationship between the billing information that, according to the Plan, its EMS system will generate and the basic network information that it could provide to ESPs for use in their billing systems. We require Pacific to clarify this relationship by March 15, 1989, and also to clarify by that date its plans for offering billing and collection services to EMS competitors. We do not, however, require it to offer such services to others at this time.

IV. ORDERING CLAUSES

20. IT IS ORDERED that, pursuant to Sections 1, 4(i) and (j), 201, 202, 203, 205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 203, 205, and 218, 5 U.S.C. § 553, and Sections 0.91(h) and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91(h), 0.291, the plan for the Provision of Electronic Messaging Services of Pacific Bell and Nevada Bell IS APPROVED, subject to the conditions described herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

APPENDIX

PARTY FILING CEI PLAN
Pacific Bell and Nevada Bell (Pacific)

PARTIES FILING COMMENTS
ADAPSO
American Newspaper Publishers Association (ANPA)
American Telephone and Telegraph Company (AT&T)
MCI Telecommunications Corporation (MCI)
Telenet Communications Corporation (Telenet)
Tymnet-McDonnell Douglas Network Systems Company (Tymnet)

PARTIES FILING REPLY COMMENTS
Pacific
Bell Atlantic Telephone Companies (Bell Atlantic)

FOOTNOTES

[1] Amendment of Sections 64.702 of the Commisson's Rules and Regulations (Third Computer Inquiry), *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order*), *modified on reconsideration*, 2 FCC Rcd 3035 (1987), *aff'd on further reconsideration*, 3 FCC Rcd 1135 (1988), *further reconsideration pending, appeals pending sub nom. California* v. *FCC*, No. 87-7230 (9th Cir) (pet. for rev. filed May 28, 1987) and *sub nom. Illinois Bell Telephone Co.* v. *FCC*, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988). *See also Report and Order*, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *modified on reconsideration*, 3 RCC Rcd 1150 (1988) (*Phase II Reconsideration Order*), *further reconsideration pending, appeals pending sub nom. BellSouth Corp.* v. *FCC*, No. 87-7290 (9th Cir.) (pet. for rev. filed Apr. 20, 1988), *California* v. *FCC*, No. 88-7183 (9th Cir.) (pet. for rev. filed May 13, 1988) and *Illinois Bell Telephone Co.* v. *FCC*, No. 88-1364 (D.C. Cir.) (pet. for rev. filed May 16, 1988).

[2] Plan at 3. Apparently, the inputs to EMS will be electronic data, unlike voice messaging services, which receive voice inputs.

[3] *Phase I Order*, 104 FCC 2d at 1020. AT&T and the BOCs also must satisfy the cost allocation requirements of our *Joint Cost Order*, which established compliance filing requirements that are separate from the CEI requirements. *See* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (*Joint Cost Recon Order*), *petitions for further recon. pending.*

[4] Parties filing comments on the Plan are listed in the attached Appendix. We do not discuss arguments raised in the comments that have been raised numerous times in other CEI proceedings and that we have already resolved.

[5] Plan at 4.

[6] *Id.* at 3.

[7] According to Pacific, such CPE could be either a "dumb" terminal or a personal computer equipped with a modem. Users could also interconnect private EMS systems with that of Pacific by purchasing an X.400 gateway, and then using a tariffed transport service. *See Id.* at 5-6.

[8] *See* Plan at Attachment 1.

[9] *See Id.* at Exhibits 1 and 2: Schedule Cal. P.U.C. Tariff No. B11, Packet Switching; and Schedule Cal. P.U.C. Tariff No. B5, Digital Data Service.

[10] *See Id.* at 4, Attachment 1.

[11] *Id.* at 7.

[12] *Id.* at 6.

[13] *Id.*

[14] ADAPSO Comments at ii.

[15] *Id.*

[16] *Id.* at 2, citing *United States* v. *Western Electric Co.* C.A. No. 82-0192, slip op. at 65-66 (D.D.C. Mar. 7, 1988) (*March 7 Opinion*).

[17] *Id.* at 3.

[18] Pacific Reply at 9, *citing Phase I Order*, 104 FCC 2d at 1054, para. 190 (emphasis added).

[19] We need not consider, for CEI purposes, the extent to which EMS subsumes the services authorized in the *March 7 Opinion*.

[20] In the Matter of the Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Gateway Services, 2 FCC Rcd 6045, 6047 (1988) at para. 17.

[21] Parties had no comments on, or raised no substantive objections to Pacific's treatment of the following parameters: Interface Functionality; Unbundling of Basis Services; Resale; Technical Characteristics; Installation Maintenance and Repair; End User Access; CEI Availability; and Recipients of CEI. Based upon our examination of the plan, we approve Pacific's treatment of these parameters.

[22] Plan at 11; *See also id.* at 20.

[23] MCI Comments at 10.

[24] Pacific Reply at 8, citing *Phase I Further Recon Order*, 3 FCC Rcd at 1143, para. 61.

[25] *Id.*

[26] *Phase II Reconsideration Order*, 3 FCC Rcd at 1155, para. 34.

[27] *See* Plan, Exhibit 2, Schedule Cal. P.U.C. No. B5 Digital Data Service, sheets 25-27. The mileage zones are: 1 mi.; 2-14 mi; etc.

[28] The *BOC ONA Order* offers these guidelines: "While we do not require . . . 'virtual collocation,' we find that two miles is a reasonable minimum distance [upon which to base charges to an enhanced service affiliate] for price parity associated with a distance-sensitive banded tariff." *BOC ONA Order* at para. 332.

[29] *Id.* at para. 333.

[30] *E.g.*, number of characters transmitted and special features requested. Plan at 6.

[31] Plan at 6-7.

[32] *Id.* at 25.

[33] ADAPSO, ANPA, MCI, Telenet, and Tymnet.

[34] ADAPSO Comments at 5; Telenet Comments at 3.

[35] ADAPSO Comments at 5; ANPA Comments at 5; MCI Comments at 11-14; Tymnet Comments at 8.

[36] ADAPSO Comments at 10-11.

[37] ANPA Comments at 4, *citing generally* the *March 7 Order*.

[38] MCI Comments at 12; Tymnet Comments at 5, citing *Phase I Order*, 104 FCC 2d at 1040, para. 158.

[39] Pacific Reply at 5. Pacific further argues that the MFJ court defers to the Commission on nondiscrimination requirements. Pacific Reply at 2-3, *citing March 7 Order* at 66.

[40] Pacific Reply at 5.

[41] *BOC ONA Order* at para. 109.

[42] *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE HAWAIIAN TELEPHONE COMPANY, INCORPORATED — File No. I-T-C-89-032

Application for authority to lease and operate satellite facilities for service between Hawaii and certain Pacific points.

ORDER AND AUTHORIZATION

Adopted: February 9, 1989; Released: February 21, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on December 12, 1988 and corrected by letter of January 17, 1989 by GTE Hawaiian Telephone Company Incorporated (HTC) requests blanket authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate satellite facilities for service between Hawaii and certain points in the Pacific Basin. The application was placed on public notice December 21, 1988. No comments were received. Upon consideration of the application, we find that authorization of the requested services and facilities is required by the public convenience and necessity.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-89-032 IS GRANTED, and HTC is authorized to:

a. acquire radio-frequency (RF) portion of ground segment capacity from GTE Spacenet and Space segment capacity from Comsat and operate the number of satellite circuits to each point specified in the attached Appendix between the Sunset earth station in Hawaii and an appropriate satellite over the Pacific Ocean, connecting with similar circuits between the satellite and the points specified, furnished by HTC's overseas correspondents;

b. lease and operate a greater or lesser number of circuits to each point listed in the Appendix, but not to exceed a total of 369 circuits in 1989, 406 circuits in 1990, and 441 circuits in 1991;

c. use said facilities to provide HTC's regularly authorized services between Hawaii and the points specified in the attached Appendix and beyond.

3. All previous authorizations for satellite facilities to the points specified are hereby superseded.

4. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

5. This authorization shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. HTC shall file a new application for service and facility to points in the Pacific area on or before November 1, 1991.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

APPENDIX

Country	No. of Satellite Circuits		
	1989	1990	1991
American Samoa	22	25	28
Austrilia	13	16	19
People's Republic of China	7	8	9
Fed. States of Micronesia	16	17	18
Fiji	5	6	7
French Polynasia	10	11	12
Guam	18	21	24
Hong Kong	8	10	12
Indonesia	8	9	10
Japan	87	92	97
Korea	33	33	33
Malaysia	10	10	10
Marshall Islands	14	15	16
New Zealand	7	8	8
Papua, New Guinea	4	5	5
Palau	18	18	18
Philippines	24	26	28
Saipan	28	32	36
Singapore	9	11	13
Taiwan	8	9	10
Thailand	11	12	13
Tonga	5	6	7
Western Samoa	4	6	8
Totals	369	406	441

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CONTEL ASC File No. I-T-C-89-018

Application for authority to
provide transborder services
between the U.S. and Canada.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 9, 1989; Released: February 21, 1989

By the Chief, International Facilities Division:

1. The above-captioned application, filed on October 26, 1988 by Contel ASC, requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to provide its authorized private line business services between all points in the U.S. and Canada via its ASC-1 and ASC-2 domestic satellites and the ANIK satellite system. The application was placed on public notice on November 2, 1988. No comments were received.

2. After review of the applications, we find that the public convenience and necessity require final grant of the subject application. The standards for determining whether domestic satellites should be used for international public telecommunications services are set forth in a July 23, 1981 letter from the Department of State, and have been applied by the Commission in considering transborder applications.[1] The standards provide for the use of domestic satellites for international public telecommunications services where INTELSAT facilities are incapable of providing the service, or where it would be clearly uneconomical or impractical to use the INTELSAT system. Contel ASC has previously been authorized to provide private line business services between specific points in the U.S. and Canada using U.S. domestic satellites. This application is similiar, if not identical, to Contel ASC's previous transborder authorization and the numerous applications which have been granted final authority in previous transborder decisions. We therefore, find that grant of the subject application is consistent with Executive Branch and Commission policies concerning the use of domestic satellites for transborder services and that Contel ASC's proposed services are consistent with the INTELSAT Article XIV(d) consultation process completed for U.S.-Canada transborder service. In view of these circumstances, we conclude that a grant of this application will serve the public convenience and necessity.

3. Accordingly, IT IS ORDERED that the application File No. I-T-C-89-018 IS GRANTED, and Contel ASC is authorized to provide private line transborder service between all points in the U.S. and Canada via the ASC-1 and ASC-2 satellite and all ANIK satellites consulted under Article XIV(d) of the INTELSAT Agreement consistent with Attachments 1 and 2.

4. This authorization constitutes the final step for the provision of transborder services through domestic satellites only insofar as the U.S. regulatory process is concerned. It does not, however, dispense with any requirements that may be imposed by the other country involved.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] July 23, 1981 letter to the Commission from James L. Buckley, Under Secretary of State for Security Assistance Science and Technology.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ADAMS TELEGRAPH COMPANY, INC. File No. I-T-C-89-033

Application for authority to resell services of other carriers to provide telegram, telex, facsimile and other similar data services and telephone (switched voice) services, from the contiguous United States to international points

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: February 9, 1989; Released: February 21, 1989

By the Chief, International Facilities Division:

1. On December 13, 1988, Adams Telegraph Company, Inc. (Adams) filed the above-captioned application requesting authority, pursuant to Section 214 of the Communications Act of 1934, to resell the international switched message telephone services of American Telephone and Telegraph Company (AT&T) to provide international switched voice service and facsimile service and the international telex services of ITT World Communications, Inc. (ITT) to provide international telegram and telex services from the contiguous United States to various international points.[1] The application was placed on public notice on December 21, 1988. No comments were received. A supplement to the application was filed on January 13, 1989.

DISCUSSION

2. The majority of recent international resale applications granted by the Commission have involved entities seeking authority to provide international switched voice services through the resale of the international switched voice services of existing international carriers. The subject application differs from these applications in that the applicant does not only seek authority to resell international switched voice services to provide international switched voice service but, in addition, to provide international facsimile service, a non-voice service. Adams also seeks to resell international telex service for provision of both international telegram and telex service. Since the requests for authority to provide international switched voice service and telex service involve the provision of the same services as those being resold, we shall treat that portion of the application in the same manner as we treat applications requesting authority to resell international switched voice service for the provision of switched voice service. However, the requests to provide facsimile service by means of resale of switched voice service and to provide international telegram service through the sale of international telex service raise a number of issues which are not present when considering applications for resale of a service for provision of the same service.

3. Turning first to request to resell international switched voice services for the provision of facsimile service, we note that AT&T's switched voice tariff contains a limitation on the use of its Long Distance Message Telecommunications Service (LDMTS) for non-voice transmission to some points. Section 2.2.2. of AT&T's Tariff F.C.C. No. 1 at 4th revised page 22 (effective April 28, 1987) states:

> *Non - Voice Transmission-LDMTS* may be used for non-voice transmission to all points other than Mexico (except non-voice facsimile transmission may be used to Mexico) and those certain foreign countries or areas as specified in 3.4.4. and 3.4.8. following.

Section 3.4.4. of AT&T's Tariff F.C.C. No. 1 at 32nd revised page 77 (effective November 4, 1988) and 29th revised page 78 (effective November 4, 1988) lists the countries and points to which its LDMTS may not be used for non-voice transmission. Section 3.4.8 of that AT&T tariff at 10th revised page 124.1 (effective November 4, 1988) and 6th revised page 124.2 (effective November 4, 1988) lists the countries and points to which AT&T's LDMTS may not be used for non-voice transmission from Hawaii. Adams does not request authority to provide facsimile service to any of the countries or points to which these sections of AT&T's tariff indicate that use of LDMTS for non-voice transmission is prohibited.

4. We shall limit our grant of authority for Adams to provide international facsimile service by resale of the international switched voice services of AT&T to the points specified. In recent decisions authorizing entities to provide international switched voice service on a common carrier basis by the resale of switched voice services of existing U.S. carriers, we have granted the applicants authority to provide switched voice service by resale to all of the points currently or hereafter listed in the international switched voice service tariffs of the carrier or carriers whose services are being resold. However, we would note that where the service being provided by a resale carrier is the same as that being resold, there is likely to be little, if any, effect on the foreign correspondent of the U.S. carrier whose service is being resold.

5. For example, a telephone call from the United States to another country provided by a carrier reselling the switched voice service of AT&T or other U.S. carrier is not likely to produce operational or economic effects on the foreign correspondent that differ from those that would occur if the U.S. customer placed the call directly with the U.S. carrier whose service is being resold. Under such circumstances, there would appear to be little or no need for such a U.S. resale carrier to obtain its own operating agreements with the foreign correspondent of the U.S. carriers whose services are being resold. Because of this factor and the fact that the reselling carrier is bound by the terms and conditions of the tariffs of the carriers whose services are being resold, we retain sufficient control over the resold voice service by means of our control over the authorizations and tariffs of the carriers whose services are being resold.

6. The resale of one international service, such as switched voice service, to provide a different international service, such as facsimile service, as is the case in this application, could well present a different situation. In such a case, additional action or different equipment may be required on the part of the underlying U.S. carrier's foreign correspondent. Consequently, it is possible that U.S. resale carriers which resell one international service of an underlying U.S. carrier to provide a different international service may be required to obtain operating agreements or other instruments of authorization by the foreign correspondent or other authorities in some countries.[2]

7. We would also note that in its *International Competitive Carrier* decision, the Commission found that each foreign country constituted a separate geographical market.[3] The Commission indicated that this finding was based primarily on the need for a carrier to obtain an operating agreement prior to providing service to a given country.[4] The Commission further found that non-dominant carriers should be required to obtain an initial Section 214 certificate to provide a given service product to a country.[5] Because U.S. resale carriers which provide international services different from the international services being resold may need to obtain operating agreements or other forms of authority from the correspondents or other authorities in the countries where the service will be provided, we believe it is appropriate that such resale carriers be granted initial Section 214 certifications to each country (geographical market) for each service product in accordance with the procedure set forth in the Commission's *International Competitive Carrier* decision.[6]

8. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[7] We find that the market will support additional carriers and that the added competition will be in the public interest.[8]

9. In view of the above discussion, we will not limit our grant of authority for Adams to provide international switched voice service by the resale of the international message telephone service of AT&T nor to international telex service by resale of the international telex service of ITT to specific points but rather we will grant the usual blanket authority granted in cases of resale of message telephone service for provision of message telephone service.

10. Upon consideration of the application and in view of the foregoing, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of international telegram, telex, facsimile and switched voice services by Adams.

11. Accordingly, IT IS ORDERED that application File No. I-T-C-89-033 IS GRANTED, and Adams is authorized to:

a. provide international facsimile service by the resale of the International Message Telephone Service set forth in AT&T's Tariff F.C.C. No. 1, between the contiguous U.S. and those points listed in Appendix A;

b. provide international switched voice service by the resale of the International Message Telephone Service set forth in AT&T's Tariff F.C.C. No. 1, between the contiguous U.S. and those points now or hereinafter listed in said AT&T tariff;

c. provide international telex service by the resale of the International Telex Service set forth in ITT's Tariff F.C.C. No. 12, between the contiguous U.S. and those points now or hereinafter listed in said ITT tariff; and

d. provide international telegram service by the resale of the International Telex Service set forth in ITT's Tariff F.C.C. No 12, between the contiguous U.S. and those points listed in Appendix B.

12. Copies of any operating agreements entered into between the applicant and its correspondents shall be filed with the Commission within 30 days of their execution.

13. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act of 1934, as amended, 47 U.S.C. Section 203 and Part 61 of the Commissions Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

14. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F. R. Section 43.61 (October 1, 1987).

15. This order is issued under Section 0.291 of the Commission's rules and is effective upon its adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] The Adams application also refers to the "transmission of money" in connection with the services it seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

[2] For example, in a Memorandum, Opinion and Order, File No. I-T-C-84-081, (released July 3, 1984), the Commission, by delegated authority, granted Instafax International, Inc. (Instafax) authority to provide digital facsimile services to Hong Kong by resale of AT&T's International Message Telecommunications Service. The Order stated that Instafax indicated that it had conducted preliminary discussions with Cable and Wireless (Hong Kong) Ltd., a prospective foreign correspondent in Hong Kong. On July 12, 1984, Instafax filed, pursuant to the provisions of Section 43.51 of the Commission's Rules, 47 C.F.R. Section 43.51, copies of: a Business Registration Certificate issued by the Government of Hong Kong; a Public Non-Exclusive

Telecommunications Service License granted by the Office of the Postmaster General of Hong Kong; and an operating agreement between Instafax and Cable and Wireless (Hong Kong) Ltd.

[3] International Carrier Policies, 102 FCC 2d 812 (1985). Order on Reconsideration, 60 RR 2d 1435 (1986).

[4] *Id.* at 828.

[5] *Id.* at 844.

[6] Because the applicant is reselling services rather than acquiring specific facilities, it need not file the circuit addition reports required by Section 63.10(b) of the Commission's Rules, 47 C.F.R. Section 63.10(b) (October 1, 1987).

[7] *See* Teltec Saving Communications Co., Mimeo No. 3548, n. 2 (released April 4, 1986).

[8] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Appendix A

Adams Telegraph Company, Inc.
Points Receiving Facsimile Service

Afghanistan
American Samoa
Andorra
Angola
Anguilla
Antarctica (Scott Base)
Antigua (Barbuda)
Argentina
Aruba
Ascension Island
Australia
Austria

Bahamas
Bahrain
Bangladesh, People's Republic of
Barbados
Belgium
Belize
Benin, People's Republic of
Bermuda
Bolivia
Botswana
Bourkina Fassa
Brazil
British Virgin Islands
(Anegada,
Camanoe Island,
Guana Island,
Jost Van Dyke
Little Thatch
Marina Cay,
Mosquito Island,
Peter Island,
Salt Island,
North Sound,
Tortola, and
Virgin Gorda)

Brunei
Bulgaria

Cameroon, United Republic of
Cape Verde Islands
Cayman Islands
Central African Republic
Chad Republic
Chile
China, People's Republic of
Colombia
Comoros, Federal and Islamic Republic of
Congo, Republic of
Cook Islands
Costa Rica
Cuba
Cyprus
Czechoslovakia

Denmark
Djibouti, Republic of
Dominica
Dominican Republic

Ecuador
Egypt, Arab Republic of
El Salvador
Equatorial Guinea, Republic of
Ethiopia

Faeroe Islands
Falkland Islands
Federated States of Micronesia
Finland
France
French Antilles
(Martinique,
St. Barthelemy, and
St. Martin)
French Guiana
French Polynesia (including the Islands of Moorea and Tahiti)

Gabon Republic
Gambia
German Democratic Republic
Germany, Federal Republic of
Ghana
Gibraltor
Greece
Greenland
Grenada (including Carriacou)
Guam
Guantanamo (U.S. Naval Base)
Guatemala
Guinea, People's Revolutionary Republic
Guinea - Bissau
Guyana

Haiti
Honduras
Hong Kong
Hungary

Iceland
India
Indonesia
Iraq
Ireland
Israel
Italy

Jamaica
Japan (including Okinawa)
Jordan

Kenya
Korea, Republic of
Kuwait

Laos
Lebanon
Lesotho
Liberia
Libyan Arab People's Socialist Jamahiriya
Liechtenstein
Luxembourg

Macao
Madagascar, Democratic Republic of
Malawi
Maldives, Republic of
Mali Republic
Malta, Republic of
Marshall Islands
Mauritania, Islamic Republic of
Mauritius
Midway
Monaco
Mongolian People's Republic
Monsterrat
Morocco, Kingdom of
Mozambique

Namibia
Nepal
Netherlands
Netherlands Antilles
(Bonaire,
Curacao,
Saba,
St. Eustatius and
St. Maarten)
Nevis
New Caledonia
New Zealand (including Chatham Island)
Nicaragua
Niger Republic
Niue
Norway (including Svalbard)

Oman

Pakistan
Palau, Republic of
Papua New Guinea
(Admiralty Islands,
Bougainville,
New Britain and
New Ireland)
Paraguay
Peru
Philippines
Poland, People's Republic of
Portugal (including Azores & Madeira
Islands)

Qatar

Reunion Island
Romania, Socialist Republic of

St. Helena
St. Kitts
St. Lucia
St. Pierre and Miquelon
St. Vincent and The Grenadines
Saipan (including Rota and Tinian)
San Marino
Sao Tome
Saudi Arabia
Senegal Republic
Seychelles Islands
Sierra Leone
Singapore, Republic of
Somali Republic
South Africa, Republic of
Span (including Balearic Islands, Canary Islands, Ceuta and Melilla)
Spanish Sahara
Sri Lanka, Democratic Socialist Republic
Suriname, Republic of
Swaziland
Sweden
Switzerland

Taiwan
Tanzania
Thailand
Togo, Republic of
Tonga Islands
Trinidad and Tobago, the Democratic Republic of
Turkey
Turks and Caicos Islands
Tuvalu

Uganda
Union of Soviet Socialist Republics
United Arab Emirates
(Abu Dhabi,
Dubai,
Fujairah,
Ras al Khaimah,
Sharjah, and
Umm al Qaiwain)
United Kingdom (including the
Channel Islands,
England,
Isle of Man,
Northern Ireland,
Scotland, and
Wales)
Uruguay

Vanuatu, Republic of
Vatican City

Wake
Wallis and Futuna Islands
Western Samoa

Yemen Arab Republic
Yemen, People's Democratic Republic
Yugoslavia

Zaire, Republic of
Zambia
Zimbabwe

Appendix B

Adams Telegraph Company, Inc.
Points Receiving Telegram Service

Afghanistan
Albania
Algeria
Andorra
Angola
Arab Republic of Egypt
Argentina
Aruba
Ascension Island
Australia
Austria
Azores

Bahamas
Bangladesh
Barbados
Belgium
Belize
Benin, People's Republic of
Bermuda
Bhutan
Bolivia
Botswana
Bourkina Fasso
Brazil
British Virgin Islands
British West Indies
(Anguilla,
Antigua
Dominica,
Grenada,
St. Kitts,
St. Lucia,
St. Vincent,
Monsterrat,
Trinidad,
Cayman Islands)
Brunei
Bulgaria
Burma
Burundi

Cameroon, Republic of
Canada
Canary Islands
Cape Verde Islands
Central African Republic
Chad Republic
Chile
China, People's Republic of
China, Republic of (Taiwan)
Christmas Island
Cocos Island
Colombia
Comoros, Federal and Islamic Republic
Congo, (People's Republic)
Cook Islands (Rarotonga)
Costa Rica
Cuba
Cyprus
Czechoslovakia

Denmark
Djibouti, Republic of
Dominican Republic

Ecuador
El Salvador
Ethiopia

Falkland Islands
Faroe Islands
Fiji Islands
Finland
France
French Antilles
Guadeloupe,
Martinique
French Guiana

Gabon Republic
Gambia
Germany (Democratic Republic)
Germany (Federal Republic of)
Ghana
Gibraltor
Greece
Greenland
Guatemala
Guinea-Bissau
Guinea (Republic of)
Guyana

Haiti
Honduras (Republic of)
Hong Kong
Hungary

Iceland
India
Indonesia
Iraq
Ireland
Israel
Italy
Ivory Coast

Jamaica
Japan
Jordan

Kenya
Kiribati
Korea

Laos
Lebanon
Lesotho
Liberia
Libyan Socialist People's Arab Jamahiriya
Liechtenstein
Luxembourg

Macao
Madagascar (Democratic Republic of)
Madeira
Malawi
Malaysia
Maldives
Mali (Republic of)
Malta
Mariana Islands (Saipan)
Marshall Islands
Mauritania
Mauritius
Mexico
Micronesia, Federal States of
Monaco
Morocco
Mozambique

Namibia
Nauru
Nepal
Netherlands
Netherlands Antilles
New Caledonia
New Guinea
New Zealand
Nicaragua
Niger (Republic of)
Nigeria
Niue
Norfolk Island
Norway

Pakistan
Palau, Republic of
Panama, including Canal Zone
Papua
Paraguay
Persian Gulf
    Bahrain
    Kuwait
    Oman
    Qatar
Peru
Philippines
Poland, People's Republic of
Portugal
Principe

Reunion (Island)
Roumania
Rwanda

Sao Tome
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Islands
Somali
San Marino
South Africa
Spain (Including Balearic Island)
Sri Lanka, Democratic Socialist Republic
St. Helena
Sudan (Republic of)
Suriname, Republic of
Swaziland
Sweden
Switzerland
Syria

Tahiti
Tanzania
Thailand
Togolese Republic
Tonga Islands
Tunisia
Turkey
Turks and Caicos Islands
Tuvalu

Uganda
Union of Soviet Socialist Republics (U.S.S.R)
United Arab Emirates
(Abu Dhabi
Ajman
Dubai
Fujairah
Ras al Khaimah
Sharjah
Umm al Qaiwain)
United Kingdom
Uruguay

Vanuatu, Independent Republic of
Vatican City
Venezuela
Vietnam

Western Samoa

Yemen Arab Republic
Yemen, People's Democratic Republic of
Yugoslavia

Zaire
Zambia
Zimbabwe

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 21, 1989

BELLSOUTH CORPORATION FILES REVISIONS TO COST MANUAL

PUBLIC COMMENT INVITED

On January 31, 1989, BellSouth Corporation filed revisions to its cost allocation manual for the separation of regulated and nonregulated costs. The original manual was filed in 1987 pursuant to the requirements of the Commission's *Joint Cost Order*, 2 FCC Rcd 1298 (1987). The Common Carrier Bureau approved the manual on January 14, 1988, conditioned upon the filing of numerous specified revisions. *See BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 3 FCC Rcd 128 (1988). On December 7, 1988, BellSouth was required to make certain revisions to its cost manual. *See BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 3 FCC Rcd 6954.

Parties may file comments on the proposed revisions to the cost manual no later than **March 14, 1989.** Replies should be filed by **March 29, 1989.** A copy of each pleading should be sent to Alicia Dunnigan, FCC, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554 and to International Transcription Services, 2100 M Street, N.W., Washington, D.C. 20036.

Copies of the revisions may be obtained from International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are also available for public inspection and copying in the Accounting and Audits Division Public reference room, Room 812, 2000 L Street, N.W., Washington, D.C.

For further information contact Alicia Dunnigan, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 21, 1989

PACIFIC BELL FILES REVISIONS TO COST MANUAL

PUBLIC COMMENT INVITED

On January 31, 1989, Pacific Bell filed revisions to its cost allocation manual for the separation of regulated and nonregulated costs. The original manual was filed in 1987 pursuant to the requirements of the Commission's *Joint Cost Order*, 2 FCC Rcd 1298 (1987). The Common Carrier Bureau approved the manual on January 19, 1988, conditioned upon the filing of numerous specified revisions. *See Nevada Bell's and Pacific Bell's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 3 FCC Rcd 287. On December 12, 1988, Pacific Bell was required to make certain revisions to its cost manual. *See Nevada Bell's and Pacific Bell's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 3 FCC Rcd 7081 (1988).

Parties may file comments on the proposed revisions to the cost manuals no later than **March 14, 1989.** Replies should be filed by **March 29, 1989.** A copy of each pleading should be sent to Alicia Dunnigan, FCC, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554 and to International Transcription Services Inc., 2100 M Street, N.W., Washington, D.C. 20036.

Copies of the revisions may be obtained from International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are also available for public inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street, N.W., Room 812, Washington, D.C.

For further information contact Alicia Dunnigan, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

GTE MOBILNET OF SOUTH TEXAS LIMITED PARTNERSHIP — File No. 00529-CL-MP-88

For Authority to Modify Station KNKA221 Operating on Frequency Block B in the Houston, Texas Metropolitan Statistical Area

MEMORANDUM OPINION AND ORDER

Adopted: February 9, 1989; Released: February 21, 1989

By the Acting Chief, Mobile Services Division:

INTRODUCTION

1. GTE Mobilnet of South Texas Limited Partnership (GTE) has filed an application for authority to modify its existing Station KNKA221 facilities in the Domestic Public Cellular Radio Telecommunications Service on frequency Block B serving the Houston, Texas Metropolitan Statistical Area (MSA).[1] Houston Cellular Telephone Company (HCTC) filed a Petition to Deny the captioned application. GTE filed an opposition to the petition and HCTC filed a reply. For the reasons set forth below, we deny the Petition to Deny and grant GTE's application.

BACKGROUND

2. In its application, GTE proposes to add a cell to its existing Station KNKA221 facilities for the purpose of providing "reliable coverage in the city of Baytown and improved coverage along U.S. Route 146." HCTC, in its petition, alleges that GTE's application proposes impermissible extensions of more than 41 square miles beyond the boundary of the Houston MSA into Chambers County, an area that has been designated by the Commission as an RSA.[2] HCTC argues that GTE's proposed extension is more than *de minimis*, that GTE's justifications for the extension are invalid, that the extension would provide GTE with an unfair regulatory advantage over HCTC and that the grant of the proposed extension would not be in the public interest.

3. In response, GTE argues that its proposed extension into Chambers County is a *de minimis* .61 per cent of the total Houston MSA. GTE contends that such an extension is justified because, due to the irregular shape of the MSA and the positioning of Baytown near the border, there is no site in its system that can provide adequate coverage to Baytown. GTE further asserts that the proposed extension has been minimized via a directional antenna system and a reduction of power to 2 to 4 watts towards the area of extension. GTE contends that it wishes to provide adequate service to customers in an area already within its MSA and not penalize them merely because their city is located next to an MSA boundary. Finally, GTE argues that HCTC's claim that grant of the application would give GTE an unfair advantage is without merit. GTE contends that its proposal will enhance service to subscribers within its MSA and, with regard to any competitive advantage, HCTC would not be precluded from applying for a similar extension.

DISCUSSION

4. In *Procedures Update*, 52 Rad. Reg. 2d (P&F) 725 (1982), *aff'd. Cellular Radio Service*, 56 Rad. Reg. 2d (P&F) 1583 (1984), and in Section 22.903(a) of the Rules,[3] the Commission established guidelines for configuring 39 dBu contours. The Commission stated that 39 dBu countours should be contained entirely within the MSA or NECMA and that any *de minimis* extension beyond the CGSA would not render an application defective if the application included a specific explanation of why it was necessary to engineer the particular cell(s) such that the 39 dBu contours could not be kept entirely within the SMSA (or NECMA). In evaluating the explanation, we take a variety of factors into account, such as the terrain and population of the area in question, the shape of adjoining boundaries and any extenuating engineering problems. *Saco River Cellular Telephone Company*, 2 FCC Rcd 2009 (Mob. Ser. Div. 1987) (*Saco*). *See Metroplex Telephone Company*, 2 FCC Rcd 7301 (Mob. Ser. Div. 1987).

5. In analyzing applications which propose extensions of the 39 dBu contours, we determine whether the extension is *de minimis*, and if so, we then determine whether there is a specific engineering explanation for the extension. Our review of the application indicates that GTE's proposed extension is approximately .61 per cent of the total Houston MSA.[4] GTE explains that in order to provide quality service to the city of Baytown, in Chambers County and along U.S. Route 146, and to make adjustments for the irregularly shaped MSA boundary, it was necessary to design the cell with such an extension. GTE has also taken several steps in engineering the site to minimize the extension, including using a directional antenna and reducing radiated power towards the area of extension. Based upon these justifications and GTE's explanation for this extension, including its intent to provide service to the city of Baytown as well as along a major highway route within the MSA, we conclude that this extension is *de minimis*. *See Modesto Celltelco.*, 2 FCC Rcd 4775 (Mob. Ser. Div. 1987).

6. In addition, we find GTE fully qualified to effectuate its proposals and that granting the instant application to make modifications to cellular station KNKA221 would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED that the application (File No. 00529-CL-MP-88) of GTE Mobilnet of South Texas Limited Partnership is GRANTED. This authorization does not include the right to any interference protection in any areas outside the Houston, Texas MSA and is conditioned upon coordinating with the current and future co-channel licensees in the areas outside the MSA. The licensee herein is put on notice that in the event current or future MSA/RSA licensees encounter interference from any extensions, the licensee herein will have to

change frequencies in those cells or pull back its 39 dbu contours to eliminate any interference due to an extension.

8. IT IS FURTHER ORDERED that the Petition to Deny filed by Houston Cellular Telephone Company is DENIED.

9. This order is issued under Section 0.291 of the Commission's Rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Acting Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Public Notice of the filing was dated February 16, 1988 (Report No. CL-88-71).

[2] *See, Order on Reconsideration*, 2 FCC Rcd. 3366 (1987).

[3] Section 22.903(a) states in pertinent part:

> The Cellular Georgrphic Service Area (CGSA) of the cellular system shall be defined by the applicant as the area intended to be served. No CGSA, which includes areas within a Metropolitan Statistical Area (MSA), or in New England, A New England County Metropolitan Area (NECMA), as modified in paragraph (e), of this section, may extend beyond the boundaries of the MSA or NECMA, except where any such extensions are *de minimis* and do not include areas within another central MSA or NECMA . . . .

[4] We note that the extension in *Saco, supra*, was approximately 6% of the total NECMA.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

NORTH AMERICAN
TELECOMMUNICATIONS
ASSOCIATION,
Complainant,

v. File No. E-85-13

SOUTHWESTERN BELL TELEPHONE
COMPANY and
SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,
Defendants.

ORDER

Adopted February 6, 1989; Released: February 21, 1989

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. This proceeding was initiated by a formal complaint filed by North American Telecommunications Association (NATA) on March 5, 1985. NATA's complaint was directed against certain intrastate service tariffs and practices of Southwestern Bell Telephone Company and Southern Bell Telephone and Telegraph Company (defendants). NATA alleged that such tariffs and practices unreasonably restricted the interconnection of customer premises telecommunications equipment (CPE) in violation of the Communications Act and Commission policies, orders and rules. NATA requested that the Commission order immediate withdrawal of the tariffs at issue and order defendants to provide nondiscriminatory interconnection and service to all local exchange service subscribers, regardless of the kind of configuration of their CPE, at reasonable and nondiscriminatory rates. Defendants denied any such violations and moved to dismiss the complaint.

2. On January 27, 1986, the Commission deferred a decision on the complaint pending resolution of related issues in *Policies Governing the Provision of Shared Telecommunications Service*, 102 FCC 2d 1421 (1986).[1] On December 6, 1988, the Commission released its decision in that proceeding.[2] In light of the Commission's decision, we asked NATA to advise whether it wished to prosecute its complaint or have it dismissed without prejudice. [3] NATA now has advised that its complaint may be dismissed.[4]

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in 47 C.F.R. § 0.291, that the complaint filed by NATA in this matter IS DISMISSED without prejudice and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTES

[1] IBM Request for Declaratory Ruling re State Regulation of STS Systems, 59 R.R. 2d 964 at n.1 (1986).

[2] Policies Governing the Provision of Shared Telecommunications Service, 3 FCC Rcd 6931 (1988).

[3] Letter from Gregory J. Vogt to Albert H. Kramer and Daniel J. Yakoubian (December 7, 1988).

[4] Letter from Daniel J. Yakoubian to Gregory J. Vogt (February 3, 1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

CITY OF PORTOLA, CALIFORNIA	CSR-2979 CA0090
Portola, California	

Petition for Special Relief

MEMORANDUM OPINION AND ORDER

Adopted: January 30, 1989; Released: February 21, 1989

By the Commission:

INTRODUCTION

1. On March 27, 1986, the City of Portola, California (hereinafter "the City") filed a petition seeking a Commission ruling, pursuant to Section 76.33(a)(2) of the Commission's Rules, that the City's franchised cable television system is not subject to effective competition. The City's petition is opposed by Feather River TV Cable Systems, Inc. (hereinafter "Feather River"), the City's franchisee, and the City has replied.

2. On October 30, 1984, the Cable Communications Policy Act of 1984 was signed into law.[1] This legislation set forth a national policy concerning cable communications, to encourage cable's growth and development, to establish guidelines for the regulation of cable systems, to promote competition in cable communications, and to minimize unnecessary regulation.[2] In the *Cable Communications Act Rules*, 58 RR 2d 1 (1985), *modified*, 104 FCC 2d 386 (1986), *aff'd in part and remanded in part sub nom. ACLU v. FCC*, 823 F. 2d 1554 (D. C. Cir. 1987), *cert. denied*, 108 S. Ct. 1220 (1988), *on remand*, 3 FCC Rcd 2617 (1988), the Commission adopted rules to implement provisions of the Cable Act. Among the rules adopted was Section 76.33, establishing standards for regulating cable television service rates. That rule states, in pertinent part:

> Only cable systems that are not subject to effective competition may be rate regulated. A cable system will be determined to be subject to effective competition whenever 100 percent of the cable community receives service from at least three unduplicated broadcast television signals. It is not necessary that the same three signals provide service to the entire community. Signals shall be counted on the basis of their predicted Grade B contour (as defined in Section 73.683 of the rules) or whether they are significantly viewed within the cable community, as defined in Section 76.54(b) and (c) of the rules. A signal that is significantly viewed shall be considered to be available to 100 percent of the cable community. A translator station authorized to serve the cable community is to be counted in the same manner as a full-service station, except that its coverage area shall be based on its protected contour as specified in Section 74.707 of the rules, provided that the translator is not used to retransmit a station already providing a Grade B contour or significantly viewed signal within the cable community.

47 C.F.R. Section 76.33(a)(2). Parties may challenge the availability of a signal, for purposes of this rule, through the Commission's special relief process. 47 C.F.R. Section 76.33(c). The rule applies to all cable systems as of October 29, 1988. Television station contour maps on file with the Commission show that two television broadcast stations--Stations KOLO-TV (ABC, Channel 8), and KTVN (CBS, Channel 2), both Reno, Nevada--place predicted Grade B contours over all of Portola. In addition, three other stations--Stations KCRA-TV (NBC, Channel 3), and KTXL (Ind, Channel 40), both Sacramento, California, and Station KHSL-TV (CBS, Channel 12), Chico, California--are considered to be significantly viewed within Plumas County, where Portola is located.[3] However, for effective competition to Feather River to be deemed to exist within Portola, one or more of the unduplicated signals must be significantly viewed within the City of Portola itself, rather than merely the county.

SUMMARY OF PLEADINGS

3. In support of its petition, the City notes that it has a population of 2,045 and is located in the Sierra Nevada mountains, surrounded by peaks and ridges which in some cases rise to 7,000 feet. The City states that it employed Mel Freedman, a consulting radio engineer, to measure the strengths of the signals of Stations KOLO-TV, KCRA-TV, and KHSL-TV. Because Station KTXL shares what the City describes as "tantamount to a common site with [KCRA-TV], and since [KCRA-TV]'s television signal at lower frequency would provide the best measurement," KTXL's signal strength was not measured.[4] The measurements were taken on January 18, 1986, and the City submits a signed copy of Mr. Freedman's engineering report. According to the report, no television broadcast station places an actual Grade B contour over Portola, or is "significantly viewable" therein. The City acknowledges that Mr. Freedman's report does not comport in all respects with Section 73.686 of the Rules, as Section 76.33(a)(2) of the Rules requires, but contends that a fully conforming report would be prohibitively expensive for a city of Portola's size, and that Mr. Freedman's report evidences the lack of Grade B or significantly viewed signals "beyond reasonable question . . . ."

4. Feather River, in opposition to the City's petition, argues that the City's technical showing is insufficient to justify the requested ruling. The report, states Feather River, "clearly does not meet the standards of [the Commission's Rules]," and the measurements were taken at only six locations, with equipment last calibrated in 1982, and with an antenna elevated only to six feet. Despite the City's assertion of prohibitive costs, contends Feather River, the City has collected over 10,000 in franchise fees from the cable system since 1982, and is apparently willing to spend money to pursue the instant petition. Nor, argues Feather River, does the City submit audience data to rebut the Commission's listing of KCRA-TV, KTXL, and KHSL-TV as significantly viewed in Plumas County and hence Portola. *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 383 app. B (1972).

Indeed, notes Feather River, the City has acknowledged that one or two signals of "viewing quality" are available in portions of Portola.

5. In reply to Feather River, the City argues that Feather River has not proved the existence of effective competition in Portola, and that therefore the Commission should issue the ruling requested by the City. Feather River has introduced no technical showings, states the City, whereas the City's proffered showings demonstrate the lack of effective competition in Portola. Indeed, notes the City, in 1983, Feather River itself contested the existence of an actual Grade B signal from KOLO-TV at the system's Mills Peak headend site.[5] The City submits a survey showing that no more than twenty-three off-air television antennae--and perhaps as few as seven--are in use in the entire franchise area, and argues that this demonstrates the lack of significantly viewed signals in Portola. The City asserts that it owes a fiduciary obligation to its residents not to expend city funds needlessly, and to protect its residents' interest. The City notes that Feather River's 12-channel system, whose basic monthly rates are between14 and15, compares with the average monthly rate in California of 9.12, and that 77% of California systems had 20-channel capacity or greater in 1984. The City also submits a videotape of reception from what the City describes as "the most sophisticated antenna system found" in Portola, the owner of which rated only KCRA-TV and KVIE as very good, while all other channels' reception was felt to be fair or poor. The City additionally submits a further engineering report from Mr. Freedman criticizing Feather River's opposition.

DISCUSSION

6. Despite the parties' emphasis in their submissions on engineering data and Grade B service contours, the facts of the instant situation are such that the parties' data is of little relevance to the crucial issue in this case, since the standards for determining effective competition have been changed by the *Second Report and Order in MM Docket No. 84-1296*, 3 FCC Rcd 2617 (1988).[6] Effective competition will be found to exist in a community if "at least three unduplicated broadcast television signals" serve the cable community, 47 C.F.R. Section 76.33(a)(2), either by placing predicted Grade B contours over the community or by being significantly viewed therein. Thus, even assuming that two stations, KOLO-TV and KTVN, place predicted Grade B contours over Portola, this alone would be insufficient to support a finding that effective competition exists in the community. What is at issue herein is the question of whether one of two other concededly non-grade B signals (KRCA-TV and KTXL) is significantly viewed in the community of Portola.[7]

7. Although Feather River relies on our 1972 listing of KCRA-TV and KTXL as significantly viewed in Plumas County, Feather River has not accounted for the effect of our 1988 amendments to the effective competition rules noted in paragraph 2, *supra*, which require that the signals in question be significantly viewed in Portola itself. While KCRA-TV and KTXL are significantly viewed on a *county - wide* basis, *see* note 3 *supra*, it is necessary for purposes of Section 76.33(a)(2) of the Rules that they be shown to be significantly viewed in Portola itself in order to be counted toward the complement of three signals which would constitute effective competition.

8. As we stated in the *Second Report and Order in MM Docket No. 84-1296*, 3 FCC Rcd at 2625, "[t]he *prima facie* standard of signal availability will be determined on the basis of predicted Grade B contours . . . and significant viewing in the cable community . . . ." Prior to the *Second Report and Order*, the test could have been met using audience data either drawn from Portola itself or from the county in which Portola is located. Feather River in fact submitted arguments based upon county-wide data. Following the *Second Report and Order*, however, community-specific data is required, prepared by an independent professional research firm and submitted by the cable system. 3 FCC Rcd at 2624. In the instant case, however, Feather River has submitted no such showing. Accordingly, we find that Portola is not served by three unduplicated signals within the meaning of §76.33(a)(2) of the Rules, and that therefore Feather River is not subject to effective competition in Portola.

9. In view of the foregoing, we find that grant of the City's petition is in the public interest.

10. Accordingly, IT IS ORDERED, that the petition for declaratory ruling (CSR-2979), filed March 27, 1986, by the City of Portola, California is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Pub. L. No. 98-549, Section 1 *et seq.*, 98 Stat. 2779 (1984).

[2] 47 U.S.C. Section 521.

[3] *Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326, 383 app. B (1972).

[4] KTXL's transmitter site is slightly over 2 miles distant from KCRA-TV's.

[5] Feather River's petition, CSR-2400, in which the system disputed KOLO-TV's Grade B signal quality, was dismissed as moot in 1985.

[6] Although the pleadings submitted by both the City and Feather River were filed prior to the 1988 modification of the rule, parties were afforded an opportunity to update their pleadings in this case, which was declined.

[7] KHSL-TV, a CBS affiliate, duplicates KTVN and thus is not counted.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Commission Requirements for
Cost Support Material
To Be Filed with 1989 Annual
Access Tariffs

ORDER

Adopted: October 3, 1988; Released: October 3, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This Order sets forth certain requirements for summary cost support material that local exchange carriers (LECs) must file to support their annual access charge tariff filings on or before December 30, 1988[1] in partial fulfillment of the requirements established in Section 61.38 of the Commission's Rules.[2] Specific data formats are detailed in the Tariff Review Plan (TRP), and are appended to this Order.[3] The TRPs display basic cost and demand information in a manner that is consistent for all LECs, thereby aiding review by the Bureau and interested parties of the LECs' required annual access tariff filings. The TRPs have served this purpose effectively in past years.

A. Background

2. The background concerning the development of previous TRPs can be found in our previous TRP Orders.[4] Based on our continued experience in reviewing the LECs' interstate access tariffs and in evaluating the usefulness of the TRP data provided by the LECs in previous filings, and based on various changes in our Rules and other changes,[5] it is necessary to modify last year's information requirements in certain respects. These modifications were developed after informal discussions with representatives of the LECs and other members of the industry and after comments on improvements and modifications to the 1988 TRP were requested from all interested parties.[6]

3. In previous years, we have relied on industry assistance in preparing various aspects of the TRP. For the 1989 TRP, we plan to rely on industry assistance in preparing technical documentation for, and formatting of, the Tier 1 Charts, which are included as Appendix B to this Order. As explained more fully below, we also plan to rely on industry assistance in developing the Tier 2 TRP requirements and in preparing the Tier 2 charts, technical documentation, and formats. We outline general Tier 2 requirements in this Order without specifying exact requirements in the form of charts. As discussed below, we have attempted to create the least burdensome requirements that will allow us to perform our statutory duties to evaluate the reasonableness of proposed rates.

B. Definition of Test Year and Past Year Cost of Service Period

4. The Commission's Rules require that carriers submit, in support of their proposed rate changes, a past year cost of service (PYCOS) study for the most recent 12-month period and a study projecting costs for a representative 12-month period (test year).[7] They also require that access rates be targetted to earn the authorized annual rate of return.[8] In the present case, because of the revisions to the schedule of annual access tariff filings adopted by the Commission, the rates filed to be effective April 1, 1989, will be expected to remain in effect for fifteen months until June 30, 1990, except as required by adjustments discussed below. The Commission left the task of defining of the PYCOS period and test year to the Bureau without specifying a particular method, but rather instructed the Bureau that "[t]he changes in periods should not exert any bias on the rates which would otherwise result . . . The priority is to assure that rates are reasonable during the period in which they are filed to be in effect, as required by the Part 69 Rules."[9]

5. The most logical and accurate method to achieve reasonable rates during the 15 month period would be to establish those same fifteen months as the test period. In their responses to the *August 10 Public Notice*, most of the LECs state, however, that development of a forecast for any part of 1990 would be difficult within the short amount of time prior to the December 30, 1988, filing date.[10] Three general alternatives are suggested by the commenters. As a first alternative, NECA and many LECs suggest that a calendar year 1989 test period be adopted.[11] Rate adjustment factors (RAFs) could be applied to individual LECs' rates in 1990 to correct any earnings imbalances. RAFs would be based on a combination of actual operating statistics for 1989 and 1990 separation procedures for Dial Equipment Minutes (DEM), Subscriber Plant Factor (SPF), and the Universal Service Fund (USF). As a second alternative, certain other LECs propose that the rates be calculated based on a 1989 test year with no adjustments.[12] Finally, AT&T states that it does not object to the use of 1989 as a test period so long as separations and accounting changes are appropriately reflected in rates. It suggests that the LECs' filings include RAFs reflecting these adjustments, which would then take effect January 1, 1990.

6. AT&T's proposal has the advantage of simplicity because it includes the separations and other required changes in the December 30 filing, and would not require an additional corrective filing next year, as NECA's proposal likely would. An important disadvantage of the AT&T proposal is that the LECs have indicated that they could not accurately forecast the mandatory 1990 separations changes in time for a December 30, 1988, filing date. The LEC proposal to use a 1989 test year without adjustment clearly would fail to produce accurate rates. NECA's proposal for a true-up filing at the end of 1990 would appear to provide a mechanism to adjust rates using reliable data, but would impose administrative burdens upon all involved. Moreover, those burdens could be substantially increased if the filings were to include the sort of wholly revised budget views and demand projections which the LECs imply would then be available. The filing could conceivably expand into a full annual access tariff filing, even though the rates would only be in effect

for six months. The Commission clearly intended to avoid the burdens of such frequent filings in the *Tariff Filing Deferral Order*.

7. From a theoretical perspective, we believe that a 15-month test period, from April 1, 1989, to June 30, 1990, would be the best choice. However, in light of the difficulties for the LECs of developing, before the access filing deadline, an accurate forecast for 1990, this appears to be an impractical alternative. Use of calendar year 1989 as the test year, however, would likely lead to inaccurate and possibly excessive rates, since ratemaking would be based on inclusion of projections for three months that are not part of the period for which the rates will be in effect. In order to accommodate the LECs' concerns regarding the difficulty of forecasting 1990 costs on short notice and at the same time ensure ratemaking accuracy, we adopt the following requirements. We adopt the nine-month period April 1, 1989, to December 31, 1989, annualized, as the test year. For the purpose of the 1989 annual access tariff filing, we waive Section 61.38(b)(1)(ii) of the Rules to the extent indicated and direct LECs[13] to submit annualized data from April 1, 1989, to December 31, 1989, as test year data. Since important separations changes are required on January 1, 1990, for DEM, SPF, and the USF, LECs shall be required to make a simplified flow-through filing effective January 1, 1990, to reflect these changes.[14]

8. The choice of a PYCOS period is complicated by the change from Part 31 to Part 32 rules on January 1, 1988. Section 61.38(b)(1)(i) of the Rules requires a cost of service study for the most recent 12-month period. The LECs generally point out in their comments that such a study would require data from the last three months of 1987, which is on a Part 31 basis and not directly comparable to data subsequent to January 1, 1988. The LECs argue that incorporation of pre-1988 data would result in cost support that would not be useful for comparison to projected test year data (which is exclusively on a Part 32 basis) or would require recasting to a Part 32 basis, which would be inexact and also burdensome to the LECs. In order to avoid such use of Part 32 data, the LECs suggest that cost support data should consist of nine months of data from January 1, 1988, to September 30, 1988, and that such data be annualized.[15] We agree with the LECs' reasoning. For the purpose of the 1988 annual access tariff filings, we waive Section 61.38(b)(1)(i) of the Rules to the extent indicated and direct LECs to submit annualized data from January 1, 1988, to September 30, 1988, as PYCOS data.[16] As we discuss below, NECA must also provide nine-month annualized PYCOS data.

9. For both the test year and PYCOS period, LECs should annualize the data except as noted in the TRP charts. Annualization should be accomplished by multiplying income statement items and associated items and minutes of use items and associated items by 4/3; balance sheet items and associated items and access line items and associated items should be left unchanged. All ratemaking must use this annualized nine-month test year data.

C. Definition of Tier 1 and Tier 2 Companies

10. As we have noted in previous TRP Orders, the LECs' ability to provide cost, demand, and revenue data varies depending on the size of the company.[17] In those Orders, we divided the LECs into two categories, Tier 1 operating companies and Tier 2 operating companies, and devised a different set of summary data requirements for each. Tier 1 companies were defined as those companies having100 million or more in total company annual regulated revenues, as determined by the 1984 Annual Statistical Volume II of the USTA Statistical Reports of Class A and B Telephone Companies for the Year 1983. Tier 2 companies were defined as companies having total company annual regulated revenue less than100 million and that file their own access tariffs with the Commission.

11. We retain these definitions for the 1989 TRP. For future TRPs, we will apply the criterion that Sections 32.11(a) and 32.11(e) of the Commission's Rules uses to distinguish Class A and Class B companies to distinguish Tier 1 and Tier 2 companies.[18] In the *1988 TRP Order*, we distinguished smaller Tier 2 LECs from the larger Tier 2 LECs by applying the definition of small telephone company study areas adopted in the *Small Telephone Company Order*.[19] For purposes of this Order, we adopt the same definition of Tier 2A and Tier 2B companies as in last year's TRP Order. We note, however, that there are currently under consideration before the Commission petitions filed by several telephone companies the resolution of which might affect our definitions of Tier 2A companies and Tier 2B companies in the future.[20]

12. A list of Tier 1 companies is included in Appendix A. The Tier 1 TRP charts are included in Appendix B. General requirements for Tier 2 companies are discussed below. We solicit suggestions and comments regarding Tier 2 detailed requirements. Comments should be made in the form of a letter to the Chief of the Tariff Division and submitted no later than October 11, 1988. We plan to adopt exact requirements for Tier 2 companies and shortly thereafter release a document regarding the Tier 2 TRP.[21] As before, only companies that do not concur in the NECA traffic sensitive tariff are required to file TRPs.

II. TIER 1 TARIFF REVIEW PLAN

13. The TRP requirements have evolved over time, based on the experience of the Commission and other parties in using the TRPs to evaluate the annual filings and of the LECs in preparing them. In many ways, the Tier 1 TRP charts are similar to the 1988 TRP. Based in part on the suggestions contained in the responses to the *August 10 Public Notice*, certain changes have been made to the Tier 1 TRP. These changes involve elimination of unneeded or obsolete requirements and the addition of requirements that will substantially improve the Commission's ability to evaluate the reasonableness of proposed rates. These new requirements have been carefully framed to place the smallest possible burden on the LECs, while allowing us to perform our statutory duty to evaluate the reasonableness of proposed rates. In the following paragraphs, we discuss the most important changes in TRP requirements.

A. Cost Charts (COS)

14. The 1989 TRP eliminates many data requirements contained in the 1988 TRP in accordance with commenters' suggestions. Specifically, we eliminate (1) data prior to 1986 contained in various charts, (2) Part 31 recasts of Charts COS1(P) and COS2(P), and (3) chart COS6. The elimination of Part 31 recasts, especially, should significantly reduce the burden imposed on LECs in last year's filing.

15. The 1989 TRP adds certain requirements for cost data that the Bureau has found are necessary for the proper evaluation of proposed rates: (1) detailed charts of historical and prospective cost allocations similar to charts in Appendix C and Appendix D of the *ARMIS Order* ; and (2) the addition of an input file to a summary model of Parts 36 and 69 (SESAME) that has been developed by the Commission. Charts COS7 and COS8 contain the detailed cost allocation requirements described in (1) above, and Chart COS6 contains the SESAME input file described in (2) above. These charts replace the 1988 TRP requirement that Access Charge Analysis System (ACAS) or ACAS-like data be filed.[22]

16. We conclude that these additional cost data requirements are necessary based on the following considerations. In prior years, we refrained from specifying exact formats for displaying the allocation of cost data pursuant to Parts 36, 64, and 69 of the Rules except for summary Charts COS1 and COS2. We merely required that such support be in conformance with Section 61.38 of the Rules. Our reasoning was discussed at length in our response to Western Union's petition.[23] In those Orders, the Bureau refrained from requiring that test year cost projections for budget views and separation allocations be subject to uniform formats. We stated that tariff rates need satisfy only the "just and reasonable" standard under the Communications Act of 1934 and that carriers may use different approaches to develop rates to meet that standard. We also stated that, given that different approaches may be used, the relevant support material may vary.[24] Experience has shown us, however, that more detailed uniform cost filings are needed for tariff review purposes.

17. In the 1987 annual access tariff filing, LECs furnished cost data with widely differing levels of detail. In at least one case, the level of detail was so deficient as to require refiling of more adequate cost support.[25] In many other cases the data provided by the LECs was deficient or unclear in some important way and necessitated the institution of time-consuming and burdensome investigations into the reasonableness of proposed rates. These investigations required the provision of cost support data that was lacking in the original filings.[26] It proved necessary, in fact, to require the provision of historical and prospective cost information similar to the type of information we have decided to add to the 1989 TRP.[27] In general, the requested information was available to the LECs and they were able to comply with our requirements. This data has proved extremely valuable in our rate investigations. If detailed cost information had accompanied the LECs' original filings, it is likely that we would have been able to achieve more definitive results in the initial tariff review process.

18. We believe that the best way to avoid repetition of the problems and delays encountered in the 1988 annual access tariff proceeding as a result of inadequate cost data is to require Tier 1 LECs to file detailed cost charts for both historical and prospective data. These charts are designed to show, on a level of detail sufficient for the Commission to determine the reasonableness of proposed rates: (1) the relationship of test year budget views to historical total company costs; (2) the relationship of projected allocations pursuant to Parts 36, 64, 65, and 69 to historical allocations; and (3) the accuracy with which allocation procedures mandated by Parts 36, 64, 65, and 69 have been applied. Charts COS6, COS7, and COS8, which provide both historical and prospective data, will implement these requirements.

19. As explained above, data provided on a lesser level of detail than that contained in these charts has proven inadequate for a showing by the LECs that proposed rates are reasonable. Therefore, to the extent that LECs' ratemaking procedures do not yield data required by these charts, there is no basis by which proposed rates developed by these procedures can be evaluated. We emphasize that although the LECs are free to develop rates using various methods and approaches, all methods and approaches must yield prospective cost data in conformance with these charts.

20. Uniformity of format and computerized provision of data would be desirable because the Commission will evaluate these showings by computer analysis, which is very difficult without uniform, mechanized formats, especially in the short time provided by the review period. We recognize, however, that requiring Charts COS6, COS7, and COS8 to be filed in computerized form and uniform format would impose a substantial burden on the LECs, in that development of uniform and computerized charts in the short time before the 1989 annual access tariff filing would be difficult for them. Chart COS6 is a completely new chart, and the LECs may have insufficient time to develop and computerize the information required by this chart for the 1989 annual access tariff filing. Charts COS7 and COS8 are slightly modified versions of ARMIS charts, but require data for different periods than required for the quarterly and annual ARMIS submissions. Therefore, we do not require that the LECs provide Charts COS6, COS7, and COS8 in computerized form for this year's filing, nor do we require that the LECs provide the identical data contained in Charts COS6, COS7, and COS8. The LECs, however, should provide data that is substantively the same as the data contained in these charts. For the 1990 annual access tariff filing, the LECs will be required to file the exact data contained in the 1990 TRP version of these charts. In addition, the data will be required in computerized form.

21. Other important cost chart changes are:

(1) *Chart COS1:* Chart COS1 is an integrated version of Charts COS1 ad COS2 in the 1988 TRP and consists of summary cost information for the PYCOS period and the test period. Chart COS1(P) provides summary information for the test period; Chart COS1(H) provides summary information for the PYCOS period. The integrated version is a modified version of ARMIS Quarterly Report Appendix A.[28] Modifications include disaggregation of the Common Line (CL) element into the following subelements: (1) Pay Phone; (2) Inside Wire (IW); (3) Base Factor Portion (BFP); and (4) Customer Premises Equipment (CPE). Also, the Local Switching element is disaggregated into (1) Local Switching and (2) Equal Access, and the non-access category is disaggregated into (1) Billing and Collection (B&C) and (2) Interexchange (IX, *i. e.*, Corridor).[29] In an addenda to Chart COS1, revenue is disaggregated into (1) Recurring Charges; (2) Nonrecurring Charges (NRC); and (3) Individual Case Basis Rates (ICB). Also required are amounts for Lifeline Adjustments and adjustments (either positive or negative) for common line Long-Term

Support and Transitional Support. In Chart COS1(P), we require calendar year 1989 total company data in addition to annualized test year total company data. All other data in COS1(P), COS1(H), and all other cost charts should be annualized data as described in paragraph 9, *supra*, except as noted in the charts.

(2) *Chart COS2:* Chart COS2 is a modified version of Chart COS3 in the 1988 TRP. Data prior to 1986 and certain cost estimates are no longer required.

(3) *Chart COS3:* Chart COS3 is a modified version of Chart COS4 in the 1988 TRP. Various items for which estimates of cost impacts are required have been changed.

(4) *Chart COS4:* Chart COS4 in the 1989 TRP is a "report card" for the 1987 and 1988 test years. Forecasts of 1987 costs from Chart COS5 in the 1987 TRP are compared to actual 1987 data. Forecasts of 1988 costs from Chart COS5 in the 1988 TRP are compared to PYCOS period data (which is a surrogate for complete 1988 actuals). In addition, the 1989 test year forecast is reported for comparison to the PYCOS data. Use of report cards in the *December 24 Access Order* was a critical component in our analysis of proposed 1988 rates.[30]

(5) *Chart COS5:* Except for a minor modification, the contents of Chart COS5 are unchanged from the contents of Chart COS7 in the 1988 TRP. As USTA recommended in its comments, we are changing cumulative unamortized amounts to average unamortized amounts in rows 410 and 420.[31]

(6) *Chart COS6:* The contents of Chart COS6 in the 1988 TRP are eliminated and replaced by the SESAME input file. SESAME inputs are required both for the PYCOS period and test year. Since PYCOS and test year separation factors are slightly different,[32] *e. g.*, for Revenue Accounting Expense, and since tax calculations differ for the PYCOS and test period, input files are slightly different for the PYCOS and test period.

SESAME user input worksheets comprise Chart COS6. Although the user input worksheets display many data cells, input data need be entered by the LECs only in those cells notated as "USR". The complete user input worksheets have been provided for the purpose of assisting the LECs in understanding the context, and therefore the exact specifications, of the USR inputs. LECs that wish to provide their own separation summary models in lieu of SESAME inputs should, however, provide both the inputs and outputs (intermediate and final) to their model. Test period data should be displayed as COS6(P) and PYCOS period data should be displayed as COS6(H).

Certain user inputs can be derived from Charts COS7 and COS8. As part of the forthcoming documentation for the Tier 1 TRP, notes concerning those USR inputs which can be derived from Charts COS7 and COS8 will be provided.

(7) *Chart COS7:* Chart COS7 is a slightly modified version of Appendix C of the *ARMIS Order*. Chart COS7 displays total company costs, the removal of non-regulated costs, adjustments and costs subject to separation. Test period data should be displayed as COS7(P) and PYCOS period data should be displayed as COS7(H).

(8) *Chart COS8:* Chart COS8 is a slightly modified version of Appendix D of the *ARMIS Order*.[33] Chart COS8 displays costs subject to separation, interstate costs and the allocation of interstate costs among the access elements. Test period data should be displayed as COS8(P) and PYCOS period data should be displayed as COS8(H).

B. Depreciation Chart (DEP)

22. Chart DEP is unchanged from the 1988 TRP, except for updating the PYCOS period and test year.

C. Demand Charts (DMD)

23. The 1989 TRP eliminates certain Chart DMD requirements contained in the 1988 TRP in accordance with commenters' suggestions. Specifically, it eliminates all data prior to 1986 for Charts DMD-2 and DMD-5. The 1989 TRP adds certain requirements that experience shows are necessary for the proper evaluation of proposed rates.[34] For Chart DMD-1, more highly disaggregated historical demand information is required. This disaggregated data is desirable for several reasons. Since CCL rates will be depooled as of April 1, 1989, greater efforts to achieve forecasting accuracy are required. AT&T and NECA, as well as many LECs, are developing more sophisticated forecasting models, which will likely produce more accurate predictions but which will also require more highly disaggregated historical data as inputs.

24. For instance, AT&T has already developed and made publicly available a detailed service-by-service price index,[35] and has indicated that provision of more highly disaggregated data is essential for the demand forecasting model it is currently developing. Indeed, it is the belief of the Bureau that any LEC that wishes to forecast demand accurately requires the disaggregated data described below for its own forecasting effort. For Chart DMD-4 we are also requiring more highly disaggregated special access demand data. This additional data is being required due to controversies surrounding many LECs' special access support data in last year's access filing. As a result of these controversies, extensive investigations into projected special access demand and the relationship of demand to costs was required.[36]

25. Other important demand chart changes are:

(1) *Chart DMD1:* Chart DMD1 requires historical demand data. On a normalized earned basis, this chart will provide monthly data on physically originating and terminating minutes of use for AT&T, the Other Common Carriers (OCCs), and for the total industry.[37] For each of these categories, the chart will provide MTS and MTS-like, FX/ONAL, WATS and WATS-like, and 800 Service and 800 Service-like minutes of use.[38] Normalized data is required as the basis for the Bureau's evaluations of test year forecasts.

(2) *Chart DMD2:* Chart DMD2 is unchanged from the 1988 TRP except for the elimination of the requirement to file pre-1986 data.

(3) *Chart DMD3:* Chart DMD3 in the 1989 TRP is a "report card" for the 1987 and 1988 test years. This chart requires the provision of demand forecasts for 1987 and 1988 test years from Chart DMD3 of the 1987 TRP and Chart DMD3 of the 1988 TRP, and the actual demand in 1987 and 1988. Chart DMD3 compares the forecasts from these filings to the actual demand that occurred in those years. In addition, it compares forecast demand for 1989 to the annualized actual demand for 1988.

(4) *Chart DMD4:* Chart DMD4 requires the provision of special access demand data. Historical special access demand for channel terminations, interoffice mileage, and circuits is provided on a monthly basis (end-of-period) beginning with April 1986 for the total industry. In addition, tracking for DS3, an important high capacity service, is added. Each LEC shall provide a definition of services included in wideband.

(5) *Chart DMD5:* Chart DMD5 is unchanged from the 1988 TRP except for elimination of the requirement to file pre-1986 data.

D. Chart RTE

26. The RTE charts require the provision of (1) rate comparisons; and (2) revenue comparisons (price-outs) under different rate assumptions. These charts incorporate the informal price-out data requests that the Bureau found so useful in the 1988 annual access tariff filing. These charts permit the calculation of percentage changes in proposed rates for entire rate categories. Comparisons should be made at the tariff level at which current rates are filed, not the tariff level at which proposed rates are filed.

(1) *Chart RTE1:* Chart RTE1 is unchanged from last year, except that RTE1 in the 1989 TRP compares 1989 proposed rates to 1988 rates.

(2) *Chart RTE2:* Chart RTE2 is unchanged, except for updating and except that the 1989 TRP version includes the DS3 rate.

(3) *Chart RTE3:* Chart RTE3 gives access price-out comparisons. Using projected test year demand and proposed rates versus rates in effect in 1988, revenues and revenue comparisons are calculated for end user, carrier common line, traffic sensitive-switched (including equal access), and special access categories. Nonrecurring charges should be included in all price-outs.

E. Chart ERN

27. This chart is unchanged from last year, except for updating and except that it includes Equal Access as a category. This chart shows earnings at the current level of aggregation.

F. Chart REV

28. This chart is unchanged, except that it updates the PYCOS and test year periods.

III. TIER 2 TARIFF REVIEW PLAN

29. In this Order we adopt general requirements for the Tier 2 TRP. We expect to develop exact charts, formats, and documentation and release them in a later document. These general requirements have been adopted with a view toward minimizing the filing burdens of smaller companies and giving due weight to the concerns these companies have expressed regarding their ability to comply with the TRP data filing requirements.

30. The Tier 2A companies are subject to the same test period and PYCOS period as the Tier 1 companies. The Tier 2A companies are required to file the same data as in Charts COS1 and COS4 in the 1989 Tier 1 TRP. The Tier 2A Chart DEP is also the same as Chart DEP in the Tier 1 TRP. Charts DMD1, DMD2, and DMD3 are updates of the 1988 Tier 2 Charts DMD1, DMD2, and DMD3. The Charts RTE, ERN, and REV are also the same as the 1989 Tier 1 TRP. Report cards for cost and demand forecasting by the Tier 2A LECs will also be required.

31. We are establishing optional cost support requirements for small telephone companies, which are defined as Subset 3 companies serving 50,000 or fewer access lines.[39] Those Tier 2B companies which are small telephone companies may follow the optional requirements outlined here.[40] The *Small Telephone Company Order* allowed small telephone companies to use the following optional cost support and ratemaking methods for tariffs effective on, or subsequent to, January 1, 1989: (1) a company must compute rates, for the first access filing, based on a "cost of service study for all elements for the most recent 12-month period with related demand for the same period";[41] (2) cost support need not be submitted with the filing; and (3) the Commission may require a company to submit such support information. For the purpose of the 1989 annual access tariff filing, we waive Section 61.39(b)(1)(i) and allow small telephone companies that choose to use an historical period for the test year to file annualized data for January 1, 1988, to September 30, 1988. If such data is not available, small telephone companies may file data for calendar year 1987. Small telephone companies also have the option of adopting the 1989 test period and PYCOS period required of the larger telephone companies in this Order. We exercise our discretion pursuant to Sections 61.38(a) and 69.39(a) and direct small telephone companies to accompany their 1989 annual access tariff filing with this cost support data.

IV. NECA

32. We do not detail specific summary data requirements for NECA in this Order. As discussed below, we request the USTA Task Force to aggregate much of the TRP data for Tier 1 LECs and Tier 2A LECs. These data, in aggregate form, should be useful for evaluation of the reasonableness of NECA's proposed common line rates. The level of detail contained in the Tier 1 plans should provide guidance to NECA in formulating the summary data for the common line pool that it should include in its filing.

33. NECA's traffic sensitive pool consists of hundreds of small companies. For those companies, it would be difficult to provide the detail required by the Tier 1 and Tier 2A TRPs. Therefore, we refrain from requiring that NECA provide traffic sensitive summary data as required by the Tier 1 plan. The level of detail required by the Tier 2 plan should provide guidance to NECA in formulating the summary data that it should include with its filing. The fact that we refrain from requiring specific summary data from NECA for its common line and

traffic sensitive pools does not exempt NECA from providing support data in complete compliance with Section 61.38 of the Commission's Rules.

34. In its comments, NECA requests a six-month PYCOS period, stating that data collection and verification for the nine months would not be complete by the time of the filing.[42] We find that six months of data is not sufficient to give a reasonable estimate for the whole year of data. We therefore require NECA to use annualized 1988 data from January 1, 1988, to September 30, 1988, as the PYCOS period. While the data for September 1988 may be subject to significant correction after the time of the filing, we believe that annualization of nine months of data will provide a better estimate of costs and demand than would annualization of six months of data. We also require NECA to provide Chart ERN for the historical and prospective periods.

35. We also require that NECA provide detailed cost support data concerning long term and transitional support calculations.

V. GENERAL INSTRUCTIONS

36. The following general instructions apply to both Tier 1 LECs and Tier 2 LECs. Except for the section entitled "Geographic Aggregation", the following general instructions also apply to NECA.

A. Errata

37. As we have noted in the past, the submission of incorrect cost suport data and the subsequent filing of errrata seriously detract from the ability of the Commission and interested parties to evaluate the reasonableness of proposed rates within the notice period.[43] In previous TRP Orders, we required that any erratum be accompanied by a request for special permission to permit the transmittal to take effect on the originally scheduled effective date. Further, we required that, if such a request were refused, it would be required that proposed rates supported by the erratum be refiled upon adequate notice, regardless of whether these rates differ from the rates as originally proposed. We continue to believe that the special permission requirement is a reasonable means of encouraging improvement in the quality of data submitted in the annual access filings. We also believe it facilitates the tariff review process.

38. We continue to require that carriers file a request for special permission with any erratum that is filed to correct errors or otherwise revise their access tariff support data. If such a request is refused, the carrier must refile the proposed rates that are supported by the erratum, regardless of whether these rates differ from the rates as originally proposed. These requirements pertain to all data filed in support of proposed access charges, including all data that are required by the TRP. All TRP data must be filed on December 30, 1988, and must be accurate and complete.

39. In the 1988 tariff filing, fewer errata were filed than in previous filings. However, even though this was the case, there were a significant number of submissions of errata filings as late as December 1987. For the 1989 annual access tariff filing, we may specify an early cut-off date for errata if it appears this will again occur. Carriers who discover errors after the cut-off will then be required to refile their tariffs with a later effective date. We also remind carriers, however, that they are under a legal obligation to correct any erroneous data discovered in the TRP or other cost support data.

B. Certification

40. NECA and the LECs must certify the accuracy of historical and test year data that are submitted in support of proposed rates by including a signed statement that the support data are true, correct and complete. Certification is required for all data submitted in support of proposed rates, including all data that are required by the TRP. The text of the certification is the same as that adopted in the *1987 Waiver Order* [44] and the *1988 TRP Order*. The certification should be displayed as the last page in the binder containing each company's TRP.

C. Geographic Aggregation

41. Except for Charts RTE and ERN, all information required by the TRP must be displayed on the level of geographic aggregation to which the particular LEC's proposed rates pertain. Charts RTE and ERN must pertain to the current, not proposed, level of aggregation, as explained above. In addition, if the tariff rates are based on data from a number of study areas or operating companies, levels of aggregation associated with each study area (state) and operating company should be provided (except for Charts RTE, ERN, and REV). Carriers need not aggregate the data above the tariff filing level.

D. Assistance from USTA

42. In order that the Commission and interested parties may evaluate the national impact of proposed rates, we request that the USTA Task Force provide an aggregation of all Tier 1 data (except for Charts COS6, COS7, and COS8, and other charts for which aggregation is inappropriate) and Tier 2A TRP data in both hardcopy and disk format.[45]

E. Supplementary Material

43. In the 1988 TRP, we allowed the LECs to submit certain TRP data on a deferred schedule, because of the complexity of analysis required or because necessary data provided to the LECs from NECA would be unavailable until the filing date. These conditions no longer pertain. Therefore we do not adopt deferred schedules for any aspect of the 1989 TRP.

F. Waivers

44. If carriers find that they are unable to provide data required by the TRP, they may file applications for waiver. These waiver applications must demonstrate good cause for reporting a different or lower level detail and indicate how these deficiencies will be corrected. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. If a carrier determines, however, that it will be unable to meet these requirements, it must file an application for waiver with the Commission no later than November 1, 1988. Each carrier requesting any waiver of the requirements of this Order or of any other Commission Rule or Order applicable to the 1989 annual access tariff filings shall include all such requests in this single application. Carriers

should not delay undertaking development of data required by the 1989 TRP in anticipation that waiver requests will be granted.

45. Some commenters request that carriers be allowed to file data under proprietary protection. We are not persuaded that any data required by the 1989 TRP is proprietary.

G. Technical Requirements

46. Only Tier 1 and Tier 2A companies are required to file their TRPs in computerized form. Although we provided advance notice in the 1988 TRP that Tier 2B companies would have to file mechanized data for the 1989 annual access tariff filing, we are persuaded by the comments of Elkhart Telephone Company and Bay Springs Telephone Company[46] that this requirement would be overly burdensome.

H. Compliance with the Paperwork Reduction Act

47. In compliance with the Paperwork Reduction Act, we estimate burden-hours and place the OMB form number and date on the formats included with this Order. We also note that this TRP was developed after informal discussions with LECs and other industry representatives and comments filed in response to our *August 10 Public Notice*. In addition we solicit industry assistance in the development of the Tier 2 TRP and the Tier 1 technical documentation and formats. By adoption of this Order, we are minimizing the burden on the LECs by several means. First, the data required by this Order should significantly improve the ability of the Commission to understand and evaluate LECs' cost support data, thereby avoiding lengthy and costly investigations to clarify issues raised by the inadequacy of many LECs' data in the 1988 annual access tariff filing. Second, this Order deletes obsolete requirements and other requirements which have proved not useful. We note, especially, that we do not require the filing of historical data which has been filed in previous years, and that carriers will not have to provide Part 31 recasts of their prospective costs as required by the 1988 TRP. Third, we alleviate substantial burdens on the LECs by waiving Section 61.38(a)(1) of the Commission's Rules and not requiring split year PYCOS or test year data. These changes should substantially lessen the burden compared to the 1988 annual access filings. Fourth, we have continued our approach of requiring significantly less data from the smaller LECs, and have thereby reduced the burdensomeness of TRP data requirements for Tier 2 companies. While we require additional data, especially in Charts COS6, COS7, COS8, DMD1, and DMD4, this data should improve the ability of the Bureau to evaluate proposed rates and thereby avoid burdensome investigations and further requests for data.

VI. CONCLUSION; PROCEDURAL REQUIREMENTS

48. This Order will be sent directly to all carriers that will file their own access tariffs on December 30, 1988, and a copy will also be sent to NECA. A copy of the Order and all attachments will be available for inspection at the Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. While the Commission will distribute copies of the main text of this Order, those parties wishing to obtain copies of Appendix B can do so only through the Commission's contractor for public records duplication, International Transcription Service, 2100 M Street, N.W., Washington, D.C. 20037, (202) 857-3800.

49. Each company should submit its TRP separately from other portions of its tariff filing. Each TRP should be filed in a separate Volume 1-2 accompanying Volume 1 of the Description and Justification. Each TRP should be arranged by study area rather than by chart. Each company should provide an extra copy of the TRP to the Accounting and Audits Division, Suite 812, 2000 L Street, N.W., Washington, D.C. 20036 on or before December 30, 1988. The Commission will provide further details regarding the procedures applicable to the December 30 tariff filing in a future release.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Access Tariff Filing Schedules, CC Docket No. 88-326, FCC 88-283, Report and Order, released Sept. 14, 1988 (*Tariff Filing Deferral Order*).

[2] *See* 47 C.F.R. § 61.38. Compliance with the requirements set forth in this order does not ensure approval of carriers' access charge tariffs or replace total cost support material requirements. Carriers remain obligated to provide adequate cost support for their proposed access charges. For instance, LECs should note additional cost support requirements outlines in Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the Commission's Rules), CC Docket No. 86-182, DA 88-809, released May 31, 1988, at paras. 3-4.

The Commission has proposed significant changes in the standard by which access rates, among others, should be evaluated, in the Further Notice of Proposed Rule Making, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, FCC 88-172, 3 FCC Rcd 3195 (1988). Final action in that docket may require revision to the cost support requirements contained in the instant Order.

[3] The TRPs should be associated with the calendar year for which the tariffs will be effective. Thus, the TRPs discussed in this Order, which will accompany the December 30, 1988, access tariff filings scheduled to become effective on April 1, 1989, will be referred to as the 1989 TRPs.

[4] *See* Commission Requirements for Cost Support Material To Be Filed with Access Tariffs on October 3, 1986, Mimeo No. 6356, released Aug. 15, 1986 (*1987 TRP Order);* Commission Requirements for Cost Support Material To Be Filed with 1988 Annual Access Tariffs, Mimeo No. 4219, released July 30, 1987 (*1988 TRP Order*).

[5] *See, e.g.*, MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Report and Order, 2 FCC Rcd 2953 (1987) (*NTS Recovery Order*), *affirmed on reconsideration*, FCC 88-288, released July 12, 1988 (*NTS Recovery Reconsideration Order);* Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the Commission's

Rules), Report and Order, CC Docket No. 86-182, FCC 87-242, released Sept. 17, 1987 (*ARMIS Order); Tariff Filing Deferral Order*.

[6] *See* Common Carrier Bureau Solicits Recommendations Regarding Modifications and Improvements to the Tariff Review Plan, DA 88-1257, Public Notice, Mimeo No. 4100, Aug. 10, 1988 (*August 10 Public Notice*). Comments in response to our August 10 *Public Notice* were filed on August 24, 1988, by United States Telephone Association (USTA), Elkhart Telephone and Bay Springs Telephone Company (Elkhart), Southwestern Bell Telephone Company (SWB), Rochester Telephone Corporation (Rochester), Contel Corporation (Contel), Cincinnati Bell Telephone Company (CBT), United Telecommunications Inc. (United), Pacific Telesis (PacTel), GTE Service Corp. (GTE), Ad Hoc Telecommunications Users Group (Ad Hoc), Mountain States Telephone Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West), BellSouth Corporation (BellSouth), American Telephone and Telegraph Company (AT&T), National Exchange Carrier Association (NECA), MCI Communications Corporation (MCI), Ameritech Operating Companies (Ameritech), Bell Atlantic Corp. (Bell Atlantic), New York Telephone Company and New England Telephone and Telegraph Company (NYNEX), Langin-Hooper Associates (LHA), and the Telephone Utilities Exchange Carrier Association (TUECA). Errata to its comments were filed on September 2, 1988, by CBT.

[7] *See* 47 C.F.R. § 61.38(b)(1).

[8] *See* 47 C.F.R. §§ 69.2(b) and (z).

[9] *Tariff Filing Deferral Order* at para. 9.

[10] *See* PacTel Comments at 1; US West Comments at 1; Ameritech Comments at 1; Bell Atlantic Comments at 1; NYNEX Comments at 2; SWB Comments at 1; Contel Comments at 2; NECA Comments at 2; GTE Comments at 1; Rochester Comments at 2; TUECA Comments at 2.

[11] *See* NECA Comments at 3-4; CBT Comments at 2; PacTel Comments at 1; US West Comments at 2-3; GTE Comments at 1; Rochester Comments at 2.

[12] *See* Ameritech Comments at 1; NYNEX Comments at 2-3; United Comments at 2; Contel Comments at 2.

[13] *See* , however, special requirements for Tier 2B companies in Section III, *infra*.

[14] We adopt this shortened test year only for this filing; for the 1990 access filing, LECs should develop a forecast for July 1, 1990 to June 30, 1991, as the test year, pursuant to the *Tariff Filing Deferral Order*.

[15] NECA, however, suggests that the PYCOS period be the annualization of January 1, 1988, to June 30, 1988.

[16] *See*, however, special requirements for Tier 2B companies in Section III, *infra*.

[17] *See* Commission Requiremets for Cost Support Material To Be Filed with Access Tariffs on March 1, 1985, Public Notice, Mimeo No. 2133, released Jan. 25, 1985 (*January 25, 1985 Public Notice*).

[18] Class A companies are those companies having annual revenues from regulated telecommunications operations of100 million or more; Class B companies are those companies having annual revenues from regulated telecommunications operations of less than100 million. The initial classification of a company is determined by its lowest annual operating revenues for the five immediately preceding years. Subsequent changes in classification are made when annual operating revenue shows a greater or lesser classification for five consecutive years.

[19] Regulation of Small Telephone Companies, CC Docket No. 86-467, FCC 87-186, released June 29, 1987, *recon. pending* (*Small Telephone Company Order*).

[20] Petitions for reconsideration of the *Small Telephone Company Order* have been filed by Alltel Corporation, Century Telephone Enterprises, Contel Corporaiton, CP National Corporation, Telephone and Data Systems, Inc., and the United States Telephone Association, and an application for review of the *1988 TRP Order* has been filed by Alltel Corporation. In its Letter from Counsel, Alltel Corporation to Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, dated December 22, 1987, Alltel Corporation raised the same issue, in the context of the Paperwork Reduction Act, that it and the other petitioners raised in their petitions for reconsideration before the Commission.

[21] To the extent that Tier 2 companies concur with tariffs filed by Tier 1 companies, modification of the TRPs set forth herein may be necessary and the Bureau is prepared to adapt the TRP requirements accordingly. Tier 2 companies which concur in a traffic sensitive tariff, other than the NECA tariff, solely with other Tier 2 companies should file a consolidated Tier 2 TRP.

[22] *See* Annual 1988 Access Tariff Filing Petitions for Waiver, Memorandum Opinion and Order, DA 87-1269, released Sept. 3, 1987, at para. 39.

[23] *See* Commission Requirements for Cost Support Material To Be Filed with 1988 Annual Access Tariffs, Memorandum Opinion and Order, DA 87-1134, released Aug. 19, 1987 (*1988 Western Union Order*). *See also 1988 TRP Order* at paras. 7-8.

[24] *See 1988 Western Union Order* at para 12.

[25] *See, e.g.*, Annual 1988 Access Tariff Filings, Memorandum Opinion and Order, DA 87-1876, released Dec. 24, 1987 (*December 24 Access Order*), at para. 67.

[26] *See* Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase I, DA 88-294, Memorandum Opinion and Order, released Feb. 29, 1988 (*Phase I Designation Order*). *See also* Annual 1988 Access Tariff Filings, CC Docket No. 88-1, Phase II, Order Designating Issues for Investigation, DA 88-735, released May 20, 1988 (*Phase II Designation Order*), Erratum, DA 88-877, released June 9, 1988.

[27] *See, e.g., Phase I Designation Order*.

[28] *See Armis Order*.

[29] For Billing and Collection, all cost information must be provided for the PYCOS and test periods, except rate of return need not be displayed.

[30] *See December 24 Access Order* at paras. 34, 218.

[31] *See* USTA Comments, Attachment A, at 2.

[32] *See* MTS and WATS Market Structure, CC Docket No. 78-72, and Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board, CC Dockets No. 80-286 and No. 86-297, FCC 88-216, Order on Reconsideration, released Aug. 8, 1988.

[33] The Common Line element is disaggregated into the Pay Phone subelement, Inside Wire subelement, Base Factor Portion subelement, and the Customer Premises Equipment subelement, in accordance with Part 69 of the Rules. The Local Switching element is disaggregated into the Local Switching rate element and the Equal Access rate element; the Non-Access category is disaggregated into the Billing and Collection element and Interexchange element, in accordance with Part 69 of the Rules.

[34] In the 1988 TRP, we directed the LECs to provide quarterly reports of traffic sensitive minutes of use on a billed basis only and indicated that certain additional requirements would be included in the 1989 TRP. We also indicated that certain addi-

tional requirements would be applied to the reporting of special access demand quantities. We find revisions to these anticipated requirements, as described in detail in this section, are necessary for two reasons. First, as explained in this section, evaluation of 1989 test year demand forecasts will require more disaggregated data than in previous years. Second significant errors made by the LECs in the provision of more highly aggregated historical demand data provided in compliance with the 1988 TRP require that a more careful, auditable approach to the provision of demand data by the LECs be adopted. *See, e.g., December 24, Access Order* at para. 187. The Commission is in the process of conducting on-site audits of certain exchange carriers partly because of the faulty historical data provided in the 1988 annual access tariff filing.

[35] Letter from Robert Castellano, AT&T, to Chief, Tariff Division, June 13, 1988.

[36] *See Phase I Designation Order; Phase II Designation Order; December 24 Access Order* at paras. 117-122, 137.

[37] The total industry data is the sum of AT&T, OCC, and LEC interstate intraLATA and corridor data.

[38] MTS services include domestic and international MTS as well as the various AT&T optional calling plas and other non-WATS/800 switched traffic.

[39] *See Small Telephone Company Order. See also* 47 C.F.R., §§ 61.39(a) and (b), 69.602.

[40] We believe that our definition of Tier 2B companies is idetical, from a practical standpoint, to the definition of small telephone companies in *The Small Telephone Company Order.*

[41] 47 C.F.R. § 61.39(b)(1)(i).

[42] *See* NECA Comments at 3.

[43] *See 1987 TRP Order* at para. 17; *1988 TRP Order* at para. 24.

[44] *See* Annual 1987 Access Tariff Filings, Petitions for Waivers of Filing Requirements, Memorandum Opinion and Order, Mimeo No. 6945, released Sept. 16, 1986 *(1987 Waiver Order).*

[45] Except for information relationg to percentages or factors, no data entries for which there is incomplete information should be aggregated. Aggregations of incomplete data should be noted.

[46] *See* Elkhart Comments at 3.

Appendix A

1989 Tier 1 LECs

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
BellSouth			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabama	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company (Code)	Operating Company (Code)	Study Area	Study Area Code
US West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC
Total Tier I Industry			TOTL

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Nevada	- Nevada	CENV
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of New York	- New York	CONY
	3. Contel of Texas	- Texas	COTX
	4. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTTC
1. General Telephone Company of California		- California	GTCA
2. General Telephone Company of Florida		- Florida	GTFL
3. General Telephone Company of the Northwest, Inc.			GTNW
		- Idaho	GTID
		- Montana	GTMT
		- Oregon	GTOR
		- Washington	GTWA
4. General Telephone Company of the South			GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5 General Telephone Company of the Southwest		GTSW
		- Arkansas	GTAR
		- New Mexico	GTNM
		- Oklahoma	GTOK
		- Texas	GTTX
	6. GTE Midwest Telephone Operations Inc.		GTMW
		- Illinois	GTIL
		- Indiana	GTIN
		- Iowa	GTIA
		- Michigan	GTMI
		- Minnesota	GTMN
		- Missouri	GTMO
		- Nebraska (also serving Kansas)	GTNE
		- Ohio	GTOH
		- Pennsylvania	GTPA
		- Wisconsin	GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Rochester Telephone Corporation		- New York	RTNY
Southern New England Telephone		- Connecticut	SNCT
United Telephone System			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	4. United Tel. Co. of Ohio	- Ohio	UTOH
	5. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	6. United Inter-Mountain Tel. Co.		UTIM
		- Tennessee	UTTN
		- Virginia	UTVA
Total Independent Companies			TICO

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-548

In the Matter of

Private Radio Bureau Report
to the Commission on Frequency
Coordination in the Private Land
Mobile Radio Services

ORDER

Adopted: February 8, 1989; Released: February 10, 1989

By the Chief, Private Radio Bureau:

1. On December 5, 1988, the Commission issued a public notice releasing a report entitled: *Report to the Commission on Frequency Coordination in the Private Land Mobile Radio Services* and soliciting comments. Comments were due on January 31, 1989 and reply comments are due on February 15, 1989.

2. On February 7, 1989, the Special Industrial Radio Service Association, Inc. (SIRSA) requested an extension of the reply comment deadline to March 3, 1989. In support of its request, SIRSA cited the large volume of comments filed in this proceeding and the difficulties associated with obtaining, reading and preparing thoughtful reply comments within the original reply comment deadline.

3. SIRSA raises valid arguments in support of its request. The volume of comments in this proceeding clearly will require more than the 15 days originally allowed for the submission of reply comments. Grant of SIRSA's request would be in the public interest by providing adequate time for all commenters that so desire to prepare useful reply comments to add to the record in this proceeding.

4. Accordingly, IT IS ORDERED, That the Motion for Extension of Time filed on February 7, 1989, by the Special Industrial Radio Service Association, Inc. is GRANTED to extend the reply comment deadline in this proceeding to March 3, 1989.

5. This action is taken pursuant to delegated authority under Section 0.331 of the Commission's Rules, 47 CFR §0.331.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

CITYLIGHT COMMUNICATIONS, INC. — File No. BPCT-881101KG

and

RAINBOW BROADCASTING, INC. — File No. BPCT-881101KH

For Construction Permits for New Television Stations
Los Angeles, California

MEMORANDUM OPINION AND ORDER

Adopted: February 9, 1989; Released: February 10, 1989

By the Chief, Video Services Division:

1. Before the staff for consideration are: (1) the above-captioned applications for construction permits for new commercial television stations on Channel 11, Los Angeles, California, filed by CityLight Communications, Inc. (CityLight) and Rainbow Broadcasting, Inc. (Rainbow); (2) a consolidated petition to dismiss these applications filed by Fox Television Stations, Inc. (Fox), licensee of television station KTTV, Channel 11, Los Angeles, California; (3) Rainbow's and CityLight's oppositions to Fox's petition; (4) Fox's consolidated reply; and (5) related pleadings.[1] Both of the subject applications, if accepted, would be mutually exclusive with Fox's pending renewal application (BRCT-880801KW) for station KTTV.

2. Rainbow and CityLight (applicants) each indicated in Section III of their respective applications that, at the time of filing, they could not certify that they possessed the financial resources required of a broadcast applicant.[2] Rainbow asserted, however, that it was continuing to seek a written financial committment which would permit it to provide the required financial certification and that it was "confident such a written commitment will soon be obtained."[3] Similarly, CityLight annotated its negative response in Section III of its application with the statement that "[a]pplicant will amend when financing is in place."

3. Fox contends in its petition that the applicants' failure to certify their financial qualifications renders their applications patently defective. Accordingly, Fox argues, the applications do not satisfy the substantially complete filing standard and should be returned to the applicants as unacceptable. Fox asserts that to hold otherwise would not only "break" the Commission's rules, but, given the already minimal obligations imposed on competing applicants in a comparative renewal context, would invite the very abuse of the renewal process which the Commission itself has recently decried in its *Second Further Notice of Inquiry and Notice of Proposed Rule Making* in BC Docket No. 81-742, 3 FCC Rcd 5179 (1988).

4. In opposition, both Rainbow and CityLight argue that financial certification has never been considered a prerequisite to acceptance for filing of an application for a broadcast permit, citing, *inter alia*, *Gali Communications, Inc.*, MM Docket No. 86-180, released May 27, 1986 (Hearing Designation Order); *Vela Broadcasting Co.*, MM Docket No. 85-132, released May 20, 1985 (Hearing Designation Order) and *K & L Communications, Inc.*, 70 FCC 2d 1987, *recon. denied*, 46 RR 2d 356 (1979). Indeed, CityLight notes that *Gali* involved an application which both failed to provide financial certification initially and was never subsequently amended to provide such certification. Yet, the application was not dismissed; rather it was designated for hearing with a financial qualification issue specified against the applicant. To the extent Fox suggests that different and stricter acceptance standards should be applied to renewal challenges, applicants cite *K & L Communications, Inc.*, 46 RR 2d 356 (1979), as deciding that matter to the contrary.

5. In reply, Fox reiterates its argument that, in a renewal context, a competing application which certifies that the applicant is not financially qualified at the cut-off date of the relevant renewal application must be deemed unacceptable for filing and dismissed. Fox again observes that, unlike the requirements facing comparative new applicants, financial certification is the only substantive obligation imposed on an applicant challenging a renewal application. Under these circumstances, Fox argues that accepting applications which do not fully discharge this duty would subject the renewal process to wholesale abuse and would render meaningless any concept of a filing window. Given this clear distinction between comparative new and comparative renewal proceedings, Fox dismisses applicants' reliance on *Gali* and *Vela*, above, because neither case involved a renewal challenge. Turning to *K & L Communications, Inc.*, the only comparative renewal case cited, Fox contends that the Commission's acceptance of the application in that case despite a deficient financial showing provides no support for applicants' position. First, the case predates the Commission's adoption of a financial certification process and involved inadequate proof of an applicant's financial qualifications, not, as here, a direct certification that an applicant was not financially qualified. Second, there was a finding in *K & L Communications, Inc.* that the applicant had made a serious attempt to resolve its financial needs.

6. Finally, Fox asserts that the Commission has ample discretion and precedent to dismiss applications so defective as to fail to satisfy basic qualifying requirements. In this connection, Fox cites, by example, *Henry M. Lesher*, 67 FCC 2d 278 (1977) and *Voice of Information*, 27 FCC 2d 723 (1971).

DISCUSSION

7. The question presented by these pleadings is straight forward. In a renewal context, does the failure of a competing applicant to certify its financial qualifications, by itself, render its application not "substantially complete" and therefore unacceptable for filing? We answer that question in the negative. Both *Gali* and *Vela*, noted above, exemplify the Commission's consistent and long-standing practice of accepting applications which fail to certify the

financial qualifications of the applicant. The remedy for failure to certify is not dismissal, but amendment or, failing that, specification of a financial qualifications issue against the relevant applicant.[4] Neither the decision in *Henry M. Lesher* nor in *Voice of Information*, both of which predate the financial certification process, vitiate this conclusion. In both cases the Commission relied on the net effect of a number of defects in the applications to find them not substantially complete.[5] While deficiencies in the financial showings of the applicants were involved, they were not, as here, the only or even the principal defects prompting the Commission's decisions.

8. Moreover, Fox's contention that *Gali* and *Vela* are inapposite because they did not involve a renewal challenge is plainly unavailing. As the applicants correctly observe, the Commission has expressly rejected the argument that different acceptance criteria should be applied to applications challenging a renewal than to competing applications not involving such a challenge. As the Commission stated in *K & L Communications, Inc.*

> Lincoln argues that construction permit applications specifying the facilities of renewal applicants should be subject to different acceptance standards from applications for unoccupied allocations. . . . We are not persuaded by these arguments. . . . Neither the Act nor the rules provides for applying acceptance criteria to construction permit applications specifying the facilities of a license renewal applicant different from the criteria applied to other construction permit applications.

46 RR 2d 356, 357 (1979).[6]

> In view of the foregoing, the staff finds no cause to diverge in this case from the consistent prior practice of the Commission and the clear guidelines governing the acceptance of applications involving deficient financial certifications provided by the cases noted in the discussion.[7]

9. Accordingly, IT IS ORDERED That, the Consolidated Petition to Dismiss filed by Fox Television Stations, Inc., IS DENIED and the captioned applications WILL BE ACCEPTED for filing by separate public notice.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Video Services Division
Mass Media Bureau

FOOTNOTES

[1] The related pleadings consist of a motion to strike portions of Fox's reply filed by Rainbow and Fox's opposition to that motion, neither of which need be addressed because they are not relevant to the issues presented here.

[2] Applicants are required to certify that they have "sufficient net liquid assets on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue."

[3] On November 21, 1988, Rainbow filed an amendment to its application, as is its right under Section 73.3522 of the Commission's Rules, providing affirmative certification of its financial qualifications.

[4] There is nothing in the order in which the Commission changed from a full financial showing to the financial certification process to suggest that the Commission was also changing the definition of a "substantially complete" application. *Revision of Form 301*, 50 RR 2d 381 (1981). To the contrary, it stated that "we are changing neither substantive law or policy nor any underlying Commission requirement." *Id.* at 381.

[5] The Commission explicitly noted in *Lesher* that

> Our finding that Lesher's applications are not substantially complete is compelled not by the importance of each uncompleted section of the applications considered individually, but by the cumulative impact of all the omissions.

67 FCC 2d at 282.

[6] We are not unsympathetic to the concern for abuse of the comparative renewal process which Fox raises. We are constrained to observe, however, that its contentions, while entirely appropriate in a Rule Making proceeding, cannot be accepted in an adjudication to derogate the procedural rights, grounded in clear Commission precedent, of parties whose applications are filed under existing standards.

[7] Fox suggests that the disposition of its petition should be referred to the Commission because its request presents novel questions. Given the decisions reviewed here, however, staff action in this matter appears fully warranted. *See K & L Communications, Inc.*, 46 RR 2d at 357.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS — Transmittal No. 1499

Revisions to Tariff F.C.C. Nos. 1, 9, and 11

ORDER

Adopted: February 9, 1989; Released: February 9, 1989

By the Chief, Common Carrier Bureau:

1. On January 27, 1989, American Telephone and Telegraph Company (AT&T) filed Transmittal No. 1499, introducing a promotion for Software Defined Network (SDN) service beginning on February 10, 1989, and extending through April 10, 1989. The promotion applies nationwide, both for new customers and existing SDN customers who place a service order during the specified time period and request installation for no later than October 10, 1989. AT&T Letter of Transmittal at 1. Pursuant to Special Permission No. 89-90, AT&T's proposed revisions, which are scheduled to become effective on February 10, 1989, were filed on 14 days' notice.[1]

2. The promotional offering will waive the following nonrecurring charges: (1) the Custom SDN Option B service establishment charge; (2) local channel service installation nonrecurring charges; (3) central office connections nonrecurring charges and voice grade private line and terrestrial 1.544 Mbps local channels and access coordination function installation charges; (4) service order charge for access line groupings and installation charges for access line groupings; and (5) optional feature service order and installation charges. *See id.*

3. On February 3, 1989, US Sprint Communications Company Limited Partnership (US Sprint) filed a petition to reject or suspend and investigate Transmittal 1499. AT&T replied on February 7, 1989.

4. US Sprint contends that AT&T's filing on 14 days' notice prevents the Commission from conducting "a preliminary examination to determine whether the offering raises questions of lawfulness." US Sprint Petition at 2 n.1. US Sprint also argues that AT&T's cost support fails to satisfy the requirements of Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38. *Id.* at 3. US Sprint next asserts that AT&T has improperly shown the effect of its filing on an aggregated basis, rather than separately for the switched services and private line categories. *Id.* at 3-4. Further, US Sprint argues, AT&T has used a number of unsupported and unreasonable assumptions in its economic cost support. *Id.* at 4.

5. AT&T replies that US Sprint's allegations with respect to the sufficiency of AT&T's economic support are unfounded. AT&T Reply at 1-2. AT&T next notes that both the net revenue test and Fully Distributed Cost results in AT&T's financial analysis show the effect of the filing separately for the switched service category. *Id.* at 2-3. AT&T submits that it did not show results for the private line category because the filing did not affect private line category results. *Id.* at 3. Finally, AT&T refutes US Sprint's allegation that AT&T made unreasonable assumptions in its cost support. *Id.* at 3-5.

6. The Common Carrier Bureau has reviewed the tariff transmittal and the various pleadings. We conclude that no compelling argument has been presented that the tariff proposal is patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

7. IT IS THEREFORE ORDERED that the petition to reject or suspend and investigate, filed by US Sprint Communications Company Limited Partnership against AT&T Tariff F.C.C. Nos. 1, 9, and 11, Transmittal No. 1499, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] The Tariff Division granted AT&T special permission to file its revisions on 14 days' notice, rather than the 35 days' notice required by Section 61.58 (c)(3) of the Commission's Rules, 47 C.F.R. § 61.58 (c)(3), on the condition that AT&T would report total expenditures and net revenue resulting from the promotion within 60 days of the end of the promotion. *See* Special Permission at 1.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-104

In the Matter of

UNITED TELEPHONE SYSTEM
Tariff F.C.C. No. 5

Transmittal No. 207

Waiver of Access Billing
Requirements and Investigation
of Permanent Modifications

ORDER

Adopted: February 9, 1989; Released: February 13, 1989

By the Chief, Common Carrier Bureau:

1. On November 9, 1988, the United Telephone Company of Florida (United) filed the above-captioned tariff revisions, proposing to implement the meet point single bill/single tariff billing option first discussed by the Commission in the *July Order* of this proceeding.[1] In addition, United proposes to revise its rates to accommodate the costs of jointly provided special access service. MCI Telecommunications Corporation (MCI) filed a petition to reject on November 25, 1988, alleging that United's proposed rate structure is inconsistent with the Commission's requirements in the *July Order*. United replied to MCI's petition on December 7, 1988, urging the Commission to deny it.

2. MCI asserts that United's proposed rates are unlawful because they include the costs of other local exchange carriers (LECs) for jointly provided services that are not received by all of United's customers. MCI Petition at 2-3. Furthermore, MCI argues that in the *July Order*, the Commission did not intend to permit LECs to create rate structures that include the costs of LECs participating in jointly provided services, unless that rate structure was for customers receiving jointly provided service. *Id.* at 3. Finally, MCI proposes that United create two different rate structures -- one for customers who do not receive jointly provided access services and one for those who do.

3. United replies that to create such a dual rate structure would be tantamount to deaveraging its rates for special access. United Reply at 2. In addition, United argues that MCI has failed to cite any authority to support its proposition that United's proposed rate structure is unlawful. *Id.* Finally, United makes a twofold argument -- first, that United is complying with the Commission's preference for single billing and, second, that the Commission has never required the adoption of a rate structure such as that being proposed by MCI, but rather endorses the rate development proposed by United, which United argues is commonly used in the industry. *Id.*

4. The Common Carrier Bureau has reviewed the tariff transmittal, United's revisions, and the various pleadings. We conclude that no compelling argument has been presented that the tariff proposal is patently unlawful so as to require rejection and that no question has been presented that warrants investigation at this time.

5. IT IS THEREFORE ORDERED that the petition to reject filed by MCI Telecommunications Corporation in response to United Telephone System, Tariff F.C.C. No. 5, Transmittal No. 207, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, 2 FCC Rcd 4518 (1987) (*July Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T COMMUNICATIONS — Transmittal No. 1418

Revisions to Tariff F.C.C. Nos. 9 and 11

ORDER

Adopted: February 9, 1989; Released: February 10, 1989

By the Chief, Common Carrier Bureau:

1. American Telephone and Telegraph Company (AT&T) filed the above-referenced transmittal on November 21, 1988, proposing to implement increased rates for private line service.[1] AT&T proposes to increase: (1) private line voice grade interoffice channels by approximately 5 to 9 percent; (2) monthly recurring charges for the voice grade access coordination function (ACF) by approximately 10 percent; and (3) nonrecurring charges for the voice grade ACF and central office connection by 12 and 46 percent, respectively.[2] Ad Hoc Telecommunications Users Committee (Ad Hoc) filed a petition to reject or suspend and investigate on December 6, 1988. AT&T replied on December 16, 1988. The proposed tariff revisions are scheduled to become effective on February 11, 1989.

2. Ad Hoc contends that the proposed increases are likely to produce earnings for the private line category in excess of authorized levels. Ad Hoc Petition at 1. Further, Ad Hoc maintains, AT&T improperly projects 1989 results on the basis of projections developed in the last quarter of calendar year 1987, rather than the most up-to-date actual results. *Id.* Ad Hoc next submits that AT&T has failed to provide the cost support required by the Commission's Rules. *Id.* at 6. Finally, Ad Hoc argues that certain assumptions upon which AT&T relies to justify its proposed increase in short-haul voice grade interoffice channel rates do not withstand analysis. *Id.*

3. AT&T responds that its financial submissions are reasonable. AT&T Reply at 3. Further, AT&T maintains, updating its January view with annualized results for the first two quarters of 1988 would have failed to account for such factors as seasonal fluctuation, marketplace volatility, and longer term trends such as the overall expansion of the interexchange market -- all of which are reflected in AT&T's financial view. *Id.* at 3-4. AT&T further asserts that its cost support data satisfy the requirements of the Commission's Rules. *Id.* at 5-7. Finally, AT&T maintains that its proposed increase in short-haul voice grade interoffice channel rates do not withstand analysis. *Id.* at 8-9.

4. The Common Carrier Bureau has reviewed the tariff transmittal and the various pleadings. We conclude that no compelling argument has been presented that the tariff proposal is patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

5. IT IS THEREFORE ORDERED that the petition to reject or suspend and investigate, filed the Ad Hoc Telecommunications Users Committee against AT&T Communications Tariff F.C.C. Nos. 9 and 11, Transmittal No. 1418, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] AT&T initially proposed these private line increases in Transmittal No. 1255, filed June 13, 1988. Both the General Services Administration and Ad Hoc Telecommunications Users Committee filed petitions to suspend and investigate the transmittal, and AT&T replied. During the pendency of Transmittal 1255, the Commission determined that AT&T's pending request for revision of depreciation rates would be granted in part. *See* Public Notice, 3 FCC Rcd 6389 (1988). Accordingly, AT&T agreed to amend its filing to comport with the Commission's decision. The Bureau also identified deficiencies in the cost support materials accompanying Transmittal 1255. Transmittal 1255 was ultimately withdrawn on November 17, 1988, by Transmittal No. 1413. By Transmittal 1418, AT&T provides updated economic support data addressing and resolving the Bureau's prior concerns.

[2] *See* AT&T Description and Justification (D&J) at 1. AT&T provides updated economic support data regarding the financial impact of the rate changes on the private line category and on total interstate financial results. *Id.* at n.*. *See* also *id.* at 10; Attachment 4.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-121

In the Matter of

Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas. RM-6015

REPORT AND ORDER

Adopted: December 12, 1988; Released: February 22, 1989

By the Commission: Commissioner Quello dissenting in part and issuing a statement; Commissioner Dennis issuing a separate statement.

INTRODUCTION

1. The Commission herein adopts new rules permitting an applicant for commercial FM facilities to request the authorization of a transmitter site that would be nominally short-spaced to the facilities of other co-channel or adjacent channel stations, provided the service of those other licensees is protected from interference in accordance with well established criteria. The necessary protection may be afforded by taking advantage of terrain elevation in the direction of the short-spaced station(s), by an appropriate reduction in operating facilities (power and/or antenna height), by use of a directional antenna, or by any combination of these means. The maximum amount of short-spacing is limited by the amount of separation specified for the next smaller size station class. However, because of the Commission's limited FM application processing resources, permissible short-spacing initially will be limited to 8 kilometers (5 miles). No change is made in the current FM channel allotment process, under which proposals for new channel allotments must meet minimum distance separations with respect to other co-channel and adjacent channel stations. Also, no change is made with respect to minimum distance separation requirements for I.F.-related stations.[1]

BACKGROUND

2. On April 27, 1987, the Commission adopted a *Notice of Inquiry* (*Inquiry*) in the above captioned matter, which sought to explore the possibility of stations using reduced facilities or directional antennas at short-spaced transmitter locations.[2] It noted that the FM service has developed into the largest and most popular aural service, and that future approval of new or modified facilities might depend on greater flexibility in the selection of transmitter sites, some of which might be unable to meet the current distance separation requirements set forth in the Rules.[3] Accordingly, it sought new information about the technical characteristics of directional FM antennas and their potential utility in allowing licensees to short-space their transmitters to some degree, while at the same time providing full protection to the service of other co-channel and adjacent channel licensees. It emphasized that no change in the current allotment process (which requires minimum distance separations) was contemplated, and that the use of directional antennas in the station assignment process would be intended merely to provide applicants with some additional flexibility in antenna site selection.

3. Comments received in response to the *Inquiry* supported our proposal, with 28 of 35 respondents favoring some form of short-spacing provision for FM station assignment. These commenters also expressed confidence in contour protection as a valid alternative to the current distance separation requirements, and in the ability of directional antennas to provide predictable levels of signal attenuation in needed directions. However, some concern was expressed that imprecision in current signal propagation methodology could increase interference levels in the FM service. The majority of commenters affirmed the view that the spacing requirements should be retained in the commercial FM channel allotment process. After considering all of the comments, the Commission concluded that the matter warranted further investigation.

4. Just before the adoption of the *Inquiry*, the Commission received a petition (RM-6015) filed by Hammett & Edison (H&E), consulting engineers, requesting amendment of Section 73.316 (FM antenna systems) to more clearly define the performance characteristics of FM broadcasting antenna systems.[4] The concerns raised by H&E were included by reference in a subsequently adopted *Notice of Proposed Rule Making* (*Notice*) adopted on February 25, 1988.[5]

5. The *Notice* reiterated our intention to explore the use of directional FM antennas for short-spacing only during the station assignment process (*not* during the allotment process), as a means of providing greater flexibility in transmitter site selection. It noted that site restrictions encountered by applicants because of FAA clearance difficulties, government ownership and restrictions on use of desirable sites, as well as other environmental, economic and coverage concerns, could require the use of a short-spaced antenna site in conjunction with a directional FM antenna to ensure the public interest while at the same time providing the required protection to the facilities of other licensees.

6. Accordingly, it proposed that the maximum omnidirectional facilities, rather than actual operating facilities of stations and vacant channel allotments, be afforded protection as currently implied in the Rules, but that in the future, licensees employing directional antennas would be afforded protection only to their actual contours. The contour protection criteria recommended were similar to those currently used in the non-commercial educational FM service. An ancillary question raised was whether Class B and B1 stations in the non-reserved portion of the FM band should use, for contour protection purposes, the same protected contour as the other classes (A, C, C1 and C2) of stations. (Currently, these Class B and B1 stations provide a weaker signal along their protected contour than the other classes of stations.) It also sought comment on whether there might be certain conditions under which a licensee might want to accept some interference to the normally protected contour.

7. Other matters raised in the *Notice* concerned limits on FM antenna directivity, methods for measuring directional antenna patterns, installation procedures, and the relationship between the horizontal and vertical radiation patterns. The *Notice* indicated that processing applications involving directional FM antennas on a larger scale would require the implementation of an automated interference analysis program (current directional stations have been authorized only after tedious manual analysis which would be impractical in any larger context). To facilitate such analysis, it proposed that antenna directivity information be submitted in tabular form, and asked for comment on what number of radials data should be submitted in order to properly define directionality. It also discussed three different methods of computing the height above average terrain (HAAT) that could be appropriate in calculating interference levels on a more directionalized basis. Lastly, because of the possibility that many applications involving the use of directional antennas could seriously impede overall application processing, the *Notice* asked whether eligibility for such operation should be restricted in some way.

SUMMARY OF COMMENTS

8. The comments filed in response to the *Notice* were, in the main, supportive, with 29 of 42 respondents generally approving our proposals. They are summarized below under general headings related to the principal policy questions raised in the *Notice*.

Is the use of contour protection an appropriate alternative to spacing requirements ?

9. The National Association of Broadcasters (NAB), the Association of Maximum Service Telecasters (MST), the Association for Broadcast Engineering Standards (ABES) and several other commenters insist that FM station short-spacing will result in overcrowding of the FM radio spectrum and lead to increased adjacent and co-channel interference problems. The AM radio service is cited as an example of the failure of contour protection as a station assignment method. On the other hand, the Association of Federal Communications Consulting Engineers (AFCCE), the Massachusetts Class A Broadcasters Association (MCABA) and many others favoring our proposal, express confidence in contour protection, citing its success in the non-commercial service, and affirm that short-spacing for the limited purpose of increased flexibility in antenna site selection could be accomplished without increased interference potential, and within the framework of the current Table of Allotments.

Should the FCC authorize short - spaced stations, provided sufficient protection is afforded the service of other licensees?

10. Most of the comments support our proposal to allow licensees site selection flexibility involving short-spacing provided that protection is afforded the service of other licensees. The proposal generally is seen as a logical extension of current rules and policies which effectively have prevented interference between short-spaced facilities. The use of directional antennas is viewed as a particularly attractive alternative to power or antenna height reduction, which has also been used to afford protection in cases where short-spacing has been necessary. The utility of directional antennas in placing a good signal over areas of demographic interest also was noted. AFCCE further commented that while it may be desirable, in the future, to modify both the field strength estimation routine and the desired-to-undesired signal ratios to more accurately represent real world propagation effects and receiver performance, it supports the proposed use of the protected contour and interfering contour values presented in Appendix C of the *Notice*.

11. Comments from NAB, Shamrock Broadcasting Corporation, Capitol Broadcasting Corporation and Infinity Broadcasting Corporation, however, suggested that the protection method utilized by the current grandfathered short-spaced stations should be implemented instead of the proposed contour overlap prohibition method. Under this method, which is specified in Section 73.213, grandfathered short-spaced stations are not allowed to make modifications that would move their 1 mV/m contour closer to the 1 mV/m contour of other short-spaced stations. To apply this method to new short-spaced facilities would restrict their service to within a projected 1 mV/m contour of a maximum facility station from the reference coordinates or some other appropriate non-short-spaced site. Capitol and Infinity believe that this approach would be more convenient to administer than the proposed interference protection signal ratio method. In regard to another pertinent contour consideration, the comments agree with the current requirement that all stations (including short-spaced facilities) should provide, at minimum, a 3.16 mV/m (70 dBu) signal over the station's allotted community of service.

What protection should be afforded short - spaced stations using directional antennas ?

12. This subject was not addressed extensively in the comments. Karl D. Lahm, P.E. (Lahm) expressed the opinion that facilities which become voluntarily short-spaced should be protected from interference based on their actual facilities within the sector where restriction of power is necessary to preclude interference. Elsewhere, he believes maximum facilities should be assumed and full spacing should be applied. Shamrock Broadcasting, Inc., Infinity Broadcasting Corporation and Capitol Broadcasting Corporation, in virtually identical comments, believe that short-spaced stations should be protected as though they were operating with full facilities from the reference coordinates of their allotment, or from their existing site (in the case of stations seeking modification of authorizations to short-space). This is seen as facilitating the "go/no go" characteristics of the existing, separation-based regulatory scheme and avoiding the more burdensome processing procedures associated with contour protection. Also, it has the advantage of assuring that voluntarily short-spaced stations would not be prevented, by encroaching stations, from modifying or enhancing their facilities in fully spaced directions at some future time.

Should the signal strength of the protected contour for Class B and B1 stations operating in the non - reserved portion of the band be the same as that for all other classes of FM stations ?

13. As to the question of what signal strength is appropriate for the protected contour in the case of Class B and Class B1 stations operating on FM Channels 221-300, some of the commenters express support for protecting the 60 dBu (1 mV/m) contour, as is the case for all FM stations operating on FM Channels 200-220 (known as the "reserved" or non-commercial educational portion of the FM band), and as proposed in the *Notice* for all other classes of stations. Class A station licensees, in particular, support this idea, because they believe it would allow them greater flexibility to upgrade to higher classes. The Massachusetts Class A Broadcasters Association (MCBA) suggests that the Commission should establish this single protected contour for all FM stations because it is the level to which a majority of the country's FM stations are presently protected, and thereby, constitutes a de-facto standard. MCBA further notes that paragraph 73.512(a)(1) of the Rules specifies the 60 dBu contour per Section 73.509 for all classes of commercial FM stations as the contour which must be protected by non-commercial Class D stations operating on non-reserved channels.

14. On the other hand, most licensees, consultants, and other representatives of Class B and B1 stations strongly opposed the use of the 1 mV/m (60 dbu) protected contour on the grounds that the size of their protected areas would be significantly reduced. AFCCE notes that because the current minimum separation requirements for non-reserved band FM stations nominally protect the 0.5 and 0.7 mV/m contours, for Class B and B1 stations respectively, it would be appropriate to maintain these values for the purposes contemplated in this proceeding.

Should the method for computing the height above average terrain (HAAT) for FM stations using directional antennas be changed ?

15. By a small margin, commenters favor the method of calculating HAAT by averaging the antenna heights along the azimuths of the arc subtending the protected contour, and along radials located at 10 degrees intervals therein. The consensus is that this method would be considerably more accurate than the traditional method (which considers the elevations along eight radials extending from the proposed station at azimuths which are multiples of 45 degrees), or by simply considering the terrain elevation along the direct path between the proposed station and the station that would be short-spaced.

Under what circumstances, if any, should FM station licensees be permitted to accept interference to their service ?

16. There is considerable agreement among the comments on the issue of whether short-spaced stations should be allowed to receive or negotiate the acceptance of interference. For example, NAB, which opposes the *Notice* in general, and Greater Media, Incorporated, which supports it, both conclude that the Commission should not permit interference by private agreement. Other commenters note that although there are a few anomalies in the existing table of required distance separations, these should not be used as a basis for allowing such interference on request. Only in special cases should the Commission consider the granting of received interference as a valid option. Susquehanna Radio Corporation suggests that the Commission move very slowly and with great caution on this matter. Susquehanna believes that it may become necessary to allow the acceptance of some interference so that maximum benefits may occur in some areas, but any such interference should be kept to a minimum and not left to the discretion of the stations involved.

What technical standards and methods of certifying the performance of FM directional antennas are appropriate?

17. The comments also contain a considerable amount of discussion on technical considerations for the use of directional antenna systems, in general, and for the purpose of short-spacing. Some of the issues raised address methods of determining accurate antenna radiation patterns. When providing measured antenna radiation patterns, the accuracy of those measurements plays a vital role in determining prohibited contour overlap compliance. The commenters submitted various arguments in support of, or in opposition to, the ascertainment of theoretical and measured antenna signal patterns in real world environments. For example, technical and engineering consultant Doug C. McDonell suggests that specific rules should be adopted to provide for routine maintenance of an authorized directional FM pattern and include yearly airborne measurement of the radiated power at 360 degrees around the transmitter site. Susquehanna Radio suggests that short-spaced directional antennas be designed in such a fashion that the supporting structure can be drastically altered or electrically removed without upsetting the pattern. Susquehanna believes that only "panel antennas" or total tower screening should be acceptable for short-spaced directional antennas.

18. In its support of the *Notice*, AFCCE also submitted extensive discussion concerning antenna radiation pattern accuracy. AFCCE reports that when data is entered into a computer program to calculate contour position, an antenna with a specified measured pattern accuracy of plus or minus a fraction of a dB can be tailored to produce an predicted interference contour that will fit with assurance of no undesired contour overlap. However, an antenna with a measured pattern with less accuracy cannot achieve as close a fit, and therefore, will require a suitable clearance buffer zone. AFCCE suggests it should be the responsibility of the manufacturer and individuals making the antenna pattern measurements to certify the accuracy of such measurements. AFCCE further reports that when full size antenna pattern measurements are made, the accuracy is totally dependent upon the accuracy of the range and the equipment used to make those measurements. Thus, AFCCE believes that the manufacturer must be able to certify that the measured scale model pattern for a given antenna is accurate within a certain dB limitation compared to the actual pattern that will be achieved by the full scale antenna that is to be built.

19. Moreover, AFCCE believes that it is imperative that any full size or scale model antenna and its supporting structure be a precise representation of the intended final structure to assure pattern measurement accuracy. Even after mounting the antenna on the supporting structure, AFCCE states that there is the potential for changes on

the supporting structure within the aperture of the antenna which may interact with the antenna elements and modify the resultant horizontal plane directional pattern. AFCCE believes that panel antennas surrounding a triangular or square cross-section supporting structure, which have a high degree of isolation from the supporting structure, will be relatively immune from changes on the supporting structure behind the panels. While ABES opposes the concept of routine short-spacing, but does support the use of directional antenna systems in general, it also expresses similar concerns about the effects of antenna supporting structures. ABES, therefore, recommends additional proof-of-performance requirements for directional antenna applicants to insure operational integrity of the installed antenna system.

20. While several commenters have firm opinions and recommendations concerning the antenna pattern representation, most indicated that further study is needed before any conclusive determination could be reached on whether to relax the 15 dB maximum-to-minimum antenna radiation pattern ratio limitation. The commenters also expressed nearly the same conclusion on the related matter of antenna gain rate of change (the 2 dB per 10 degrees of azimuth limit which is currently applied as a condition of the permit of many directional FM stations), and whether this standard should be applied to all FM directional antenna systems.

21. Other technical issues, such as treatment of the vertical radiation pattern relative to the horizontal antenna pattern, specificity of application filing requirements in describing the antenna radiation pattern relative field strength at prescribed periodic azimuth intervals, establishment of applicant categories for accepting filings in consideration of the Commission's processing resources, establishment of a method to determine accurate HAATs in the direction of protected allotments and stations, IF protection standards, and propagation curves, elicited a range of suggestions, none of which were sufficiently supported to justify any change at this time.

DISCUSSION

22. Our intention in this proceeding is simply to afford FM applicants and licensees some flexibility in the selection of transmitter site by permitting a limited amount of short-spacing to other co-channel and adjacent channel stations, by taking account of the effect of such factors as height above average terrain (along the pertinent radials), directional antennas and reduced operating facilities to afford requisite protection to existing and alloted coverage areas. We recognize now that the *Notice*, by failing to specify any limits on such use, has prompted some suggestions that go considerably beyond what we had envisioned.[6] At the same time, it has elicited considerable opposition from those who see no limit to its potential use. Accordingly, as discussed below, we are taking what we believe is a conservative approach toward the implementation of contour protection, directional antennas and the short-spacing they make possible in the commercial FM service. Because certain non-commercial, educational stations are subject to the requirements of Section 73.207, those stations are necessarily included in the changes adopted herein.

Contour protection as an alternative to distance separation requirements

23. Contour protection lies at the heart of this proceeding, and because it is used (and has been used for many years) in the non-commercial educational FM broadcast service, we assumed that there would be little question as to its validity as a station assignment methodology. However, concerns were raised by the commenters as to whether a contour protection based assignment system is desirable in the non-reserved band, and whether good quality FM service can be maintained under such a system. Thus, before our discussion can proceed to the consideration of short-spacing rules and related matters such as directional FM antenna performance, it is necessary to address these concerns regarding contour protection.

24. Several of the commenters allege that contour protection is not an adequate substitute for the distance separation requirements currently applicable to the various classes of FM stations in the non-reserved band. This view is rebutted by others, who point out (as we noted in the preceding paragraph) that contour protection has long been used in the reserved portion of the FM band with excellent results.

25. Nevertheless, most of the arguments against contour protection are based on claims that it is fundamentally inferior to the distance separation requirements. For example, some of the commenters prefer the current distance separation requirements over contour protection as a station assignment method because stations authorized pursuant to the minimum spacing requirements are afforded protection to the full facilities for their class. Thus, stations can begin operation with reduced facilities initially and upgrade at a later date without exceeding the interference limits that protect co-channel and adjacent channel stations. These commenters also argue that applying distance separation requirements is administratively less complex than contour protection. Lastly, several commenters impute to contour protection the interference levels which exist in the AM service, and they argue that a similar result would afflict FM if the use of contour protection were to be expanded into the commercial portion of the FM band.

26. We do not find these arguments persuasive. First, under the short-spacing rules adopted herein, all existing fully spaced stations will continue to be afforded protection based on the presumed use of the maximum ERP and reference HAAT for their station class. Consequently, the upgrade potential for the vast majority of stations will be unchanged.[7] We will, however, protect only the actual facilities of the stations that apply for short-spaced locations under the new rules.[8] Thus, the upgrade potential of stations applying for short-spaced locations under these new rules will depend largely on the spacing and facilities of subsequently authorized stations. We believe that this potential limit on the ability to upgrade will be considered as an acceptable trade-off to permittees or licensees that cannot obtain a fully spaced antenna site, or who for some other reason desire a short-spaced antenna site. We will merely permit licensees to weigh the advantages and disadvantages associated with short-spacing under these new rules, and to base their applications upon what they believe to be their best interest.

27. We agree with the commenters that preparing and processing applications involving contour protection are more complex than preparing and processing those con-

forming to the separation requirements. However, we expect to be able to process such applications adequately by following, in large part, the current assignment policies applicable to non-commercial educational FM stations in the reserved band. Insofar as the impact on applicants is concerned, we note that the burden of the necessary additional showings will fall voluntarily upon only those applicants expecting an appropriate benefit.

28. Arguments against contour protection based on analogies involving the AM broadcast service also appear inapplicable, as are allegations that directional antennas will lead to the "AM-ization" of the FM service. First, the interference problems characteristic of the AM service today are not the result of contour protection, *per se*. In fact, daytime groundwave service is based on contour protection and has proven to be very effective. It is the nighttime AM service with its attendant skywave interference from multiple sources that has proven so troublesome. However, the wide variability that is characteristic of nighttime AM propagation rarely afflicts the FM service. Other factors (*e.g.*, bandwidth limitations, spectrum noise levels and receiver design characteristics) also contribute to the AM problem. We believe that these other factors, and not contour protection, are the principal causes for erosion of signal quality in the AM band. We have no reason to believe that the further application of contour protection in the FM service will have any adverse effects.

29. Finally, we wish to address the argument that contour protection is inherently inferior to distance separation requirements in a mature, more heavily populated service. It should be noted that contour protection takes into account the variability of the terrain surrounding stations, whereas the separation requirements are based on average terrain assumed to be uniform in all compass directions. For example, using separation requirements, two FM stations located in the relatively flat terrain of southern Florida must be separated by the same distance as two identical stations located on the sides of mountains in West Virginia. Obviously, this failure to account for variations in the height of terrain means that the separation requirements sometimes overprotect, and at other times underprotect, FM service. The principal advantages of separation requirements are simplicity of administration (on a "go no-go" basis), and producing a more even distribution of assignments. However, in a mature service, both of these advantages are less important than in the early phases of its development.

Short - spacing and the use of directional antennas

30. The majority of the comments also affirm our belief that if we routinely permit an applicant to seek authorization of a transmitter site that involves a modest amount of short-spacing, provided appropriate protection is afforded to all other assignments, applications, and allotments, greater flexibility in system design and a higher quality of service will result. The record demonstrates that licensees who are or who anticipate having problems in finding suitable antenna sites, as well as Class A licensees seeking any means of becoming more competitive with the higher classes of stations, support the proposal.

31. We note that several of the opposing comments allege that the Commission's propagation curves are inaccurate. In this regard we must point out that these same curves and methods were also used to develop many of the current spacing requirements and are employed daily in making non-commercial educational FM assignments. Some commenters also continue to express concern that we will attempt to expand the use of contour protection at a later date by applying it in the allotment process. However, we reiterate that we do not intend to do so. Clearly, that is not the proposal at issue here. Accordingly, we conclude that these concerns do not warrant our terminating or delaying this proceeding. On the contrary, the majority opinion is that sufficient information and policy considerations exist which warrant our adoption of rules in this matter at this time.

32. However, because the technical record in this proceeding does not clearly indicate the fullest extent to which FM directional antennas could be employed, we conclude that at this time, use of directional antennas should be authorized cautiously. Therefore, we have decided that, in general, stations should not be authorized at locations that do not meet, as a minimum, the required co-channel and adjacent channel spacings applicable to the next lower class of station.[9] In other words, short-spaced locations will be allowed, but only to the extent that would be feasible if the stations were to operate with the approximate minimum facilities permitted their class. The exact distances involved are given in a table in new Section 73.215. Licensees will continue to be required to provide the prescribed principal city coverage (70 dBu) over their community of license and to preserve their service from interference.

33. We believe the limited amount of short-spacing we are herein permitting will afford applicants with a genuinely helpful amount of flexibility in antenna site selection, while effectively precluding large short-spacings that would require extremely directionalized antenna patterns that may be difficult to maintain on a continuing basis. Moreover, these rule changes enable us to discontinue granting waivers of Section 73.207 for co-channel and adjacent channel short-spacing.[10] Henceforth, applications involving short-spacing will routinely be required to protect the facilities of other licensees pursuant to similar contour protection criteria currently used in the non-commercial service.[11] This decision will permit an average (for all classes of stations) maximum co-channel short-spacing of 26 kilometers (16 miles), or about a 14% reduction in the current spacing requirements.[12] However, for individual classes the reduction would vary significantly, with lesser reductions being permitted the higher classes of stations.

Protection to be afforded to fully spaced and short - spaced stations

34. The comments generally affirm the proposition made in the *Notice* that allotments and full facilities of stations meeting the spacing requirements be fully protected. Several commenters suggest that the service of a short-spaced station be protected in non-short-spaced directions by assuming that the station is operating with full facilities in non-short-spaced directions. However, we must reject this approach because of the substandard and geographically indeterminate service that would be afforded protection beyond the actual contour.[13] Moreover, we would have no way of accurately predicting where any future contour would be located.[14] Accordingly, the policy concerning the type of protection to be afforded fully spaced and short-spaced FM stations will be adopted as

proposed.[15] For this reason, the rules we adopt today provide for continued use of the minimum spacing requirements, with contour protection to be used only in those situations where the minimum spacing requirements are not met. Applicants proposing to meet the minimum spacing requirements towards an existing or proposed facility need not be concerned with contour protection of that facility. However, if the applicant proposes a new short-spacing or an aggravation of an existing short-spacing not covered under Section 73.213, then the applicant must comply with the contour protection requirements with respect to that facility.[16]

35. Because applications processed pursuant to the new rules adopted herein are entitled only to protection based on proposed facilities, applicants for such stations will be required to expressly indicate by an appropriate exhibit in their application that they are to be processed pursuant to these new rules. This will allow immediate identification of the protection to be afforded such applications. Failure to thus indicate that an application is to be processed under these new rules will afford the proposed facility more protection than it is entitled to and unnecessarily restrict other applicants. Therefore, if an applicant requests authorization to operate pursuant to these new rules, an additional element of substantial completeness at tender will be the requirement that an exhibit be submitted intended to demonstrate compliance with the applicable provisions of the new rules. Accordingly, an applicant's failure to submit the appropriate exhibit will result in the return of the application as not substantially complete at tender. We are therefore adding this requirement for an exhibit to our list of tender criteria utilized in evaluating the substantial completeness of applications under the FM "hard look" processing procedures. *See Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19936 (1985). Finally, we are adding a question to Section V-B, FCC Form 301 (Application for Authority to Construct or Make Changes in a Commercial Broadcast Station), which will require an engineering study to establish the lack of prohibited overlap of contours involving affected stations. We are making a similar revision in FCC Form 340 (Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station). In the interim, before the changed forms are available, applicants proposing operation pursuant to the new rules must include, as a supplement to the old form, the Exhibit required in the attachment appended hereto as Appendix C.

Directional antenna performance and certification

36. The comments filed in response to the various technical questions raised in the *Notice* concerning FM directional antenna performance, both practical and theoretical, are not dispositive. As noted above, opinion was divided on the accuracy of field testing of directional antenna performance, regardless of whether it was conducted on site or reduced construction test range scale. Many commenters expressed concern over the need for meticulous installation procedures. A few commenters requested that post-installation field strength proof-of-performance measurements be conducted to ensure that actual performance equalled the manufacturer's predicted performance.

37. The comments also contained little information which would support any amendment of the current requirement pertaining to directional antenna maximum-to-minimum gain (15 dB). Comments on the protection to be afforded vertical and horizontal radiation components, and the amplitude relationship between the two components were also inconclusive. There was some agreement that the 2 dB per 10 degree limit on directional antenna rate-of-gain change should be applicable to all directional antennas used in short-spaced situations.

38. Having carefully considered the comments, we conclude that insufficient justification exists for any major change in the policies and rules currently relating to directional antenna performance. We believe the provisions currently contained in Section 73.316(b) *et seq* generally are sufficient to ensure that the performance of a directional antenna will meet its manufacturer's claims. However, several minor amendments to that rule section appear appropriate as a means of further insuring the predicted directional performance is obtained in reality and because we need precise information to automate our studies of contour protection. Thus, we will require that applications for construction permits which propose directional antennas include the following exhibits: (1) A single composite relative field horizontal plane pattern that encompasses both the horizontal and vertical polarization (rather than separate patterns for horizontal and vertical polarization); (2) A tabulation of the relative field pattern, containing values at least every 10 degrees with additional tabulations for maximas and minimas; (3) A statement that the antenna will be mounted on the antenna tower as recommended by the antenna manufacturer; (4) a statement that the directional antenna will not be mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-sectional area of the tower in the horizontal plane; and, (5) a statement that no other antennas of any type are mounted on the same tower level as a directional antenna, and that no antenna of any type is mounted within any horizontal or vertical distance specified by the antenna manufacturer as being necessary for proper directional operation. Upon completion of antenna construction, we will require a statement from a licensed surveyor that the antenna has been installed pursuant to the manufacturer's instructions and is in the proper orientation.

39. With regard to another antenna radiation pattern issue, we have concluded that our current policy which limits the rate-of-gain change to 2 dB per 10 degrees should be applied to all future short-spaced directional antenna systems. Most commenters addressing this specification consider it to be appropriate and potentially useful as a means of discouraging and rejecting applications containing exaggerated claims of performance. This matter can always be revisited in the future if further experience suggests it is overly conservative.

40. We will continue to require proofs of performance to establish that directional antennas have the appropriate measured patterns. However, those applicants authorized to employ directional antennas pursuant to the contour protection requirements must establish that the measured patterns for both horizontal and vertical polarization do not exceed the proposed pattern in any direction. The measured patterns will be used only to establish compliance with the terms of the construction permits; they will not be used to determine distances to contours. The pat-

terns authorized by the construction permits will always be used to determine distances to contours for existing facilities.

Calculation of HAAT in the direction of short - spaced stations

41. The current rules for determining the appropriate HAAT in the noncommercial FM service and the Low Power TV service require the use of as many radials as necessary to establish the lack of prohibited overlap. In some cases, only a few radials will be required, while in other cases, such as a valley between two mountains, many radials may be required to accurately establish the lack of prohibited overlap. We are adopting this method for use in the FM broadcast service when contour protection is required. The distance to the pertinent contours is to be calculated along each radial using that radial's individual HAAT and the ERP at this azimuth. This method of determining signal strength must be used for both the signal to be protected (the desired signal) and the signal of the station providing the protection (the interfering signal). However, for purposes of station authorization, the overall HAAT will be computed in accordance with the traditional eight-radial procedure.

42. Protection of stations not authorized pursuant to Section 73.215 shall be computed using the maximum ERP and reference HAAT. The actual HAAT on individual radials must be increased or decreased by the amount that the eight-radial HAAT could be increased or decreased. For example, if a Class C station with 100 kilowatts ERP and an eight-radial HAAT of 350 meters is to be protected based on presumed use of maximum facilities, its contours would be calculated by adding 250 meters (the 600 meter reference HAAT minus the 350 meter actual eight-radial HAAT) to the actual HAAT on each radial used in calculating the distance to the pertinent contours. However, for stations whose authorized facilities exceed the maximum ERP permitted by Section 73.211 of the rules for the standard eight-radial antenna HAAT employed, whether or not authorized pursuant to Section 73.215, the maximum ERP specified in Section 73.211 for the station class shall be used. In these cases, the antenna HAATs in the directions of concern to be used are those that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply (*e.g.* zoning laws, FAA constraints, or application of Section 73.213).

Protected contours for Class B and Class B1 stations in the non - reserved portion of the FM band

43. Because this proceeding proposes to reintroduce, in a limited way, the contour protection method of making assignments affecting the commercial FM service, it is necessary to determine the signal strength of the contour to be protected. We questioned in the *Notice* whether a uniform level of 1 mV/m for all station classes might be appropriate. This is the level used for non-commercial educational FM stations and approximates the level that is, in effect, protected for most of the commercial station classes. Class B and B1 stations in the non-reserved band, however, in effect, receive protection of somewhat lower signal levels, approximately 0.5 mV/m and 0.7 mV/m respectively. Certainly, treating all station classes on an equal basis by protecting the 1 mV/m contour would be less burdensome from an administrative standpoint.

44. Although Greater Media claims that using a universal 1 mV/m standard would erode Class B FM service, we believe that weak signal, fringe area FM service is more likely to be eroded by the ever increasing radio frequency noise level and multipath interference encountered in urban environments. We originally determined 25 years ago, as Greater Media indicates, that Class B stations should cover a 40 mile radius, and that they should operate with 50 kW maximum instead of 20 kW maximum. At that time, we assumed that this would allow strong signal coverage in the heart of major urban areas and a weaker but still usable signal in the suburban and rural areas beyond.

45. Today, urban areas have expanded, and the 0.5 mV/m signal provided to the outer urban environments may no longer be adequate to provide quality reception. Nevertheless, altering the protected signal levels for Class B and B1 stations in the non-reserved band while maintaining their facilities at current levels could result in some loss of protected coverage area. Because this matter is essentially a peripheral issue and is secondary to the primary intent of this proceeding, we will adopt the protected contour signal levels suggested by the licensees of these stations, namely 0.5 mV/m and 0.7 mV/m, for Class B and Class B1 stations respectively, in the non-reserved band, while recognizing that it may be appropriate to address this issue in greater detail in the future.

Voluntary acceptance of interference

46. The comments are virtually unanimous that licensees should not be allowed to accept any interference beyond that permitted by the Rules currently. We prefer to develop further experience with various methods of limiting interference, such as the use of directional antennas as contemplated in this proceeding. Accordingly, the rules will not be revised to permit acceptance of additional interference.

CONCLUSION

47. In our discussion above, we have attempted to address and resolve the objections of those commenters who are concerned that inappropriate use of FM directional antennas could significantly degrade the quality of the FM service. The rules we are adopting herein are based largely on the many years of positive experience we have gained in the authorization of directional antennas. These successful, long-standing rules and policies have been updated and refined somewhat as a result of the information obtained in this proceeding. We believe they represent a useful but prudent expansion in the role of FM directional antennas in the provision of FM service, and we are confident that not only will this additional use not degrade the quality of FM service, but that it will materially improve it by assisting licensees in obtaining the most desirable antenna sites for the coverage they want to provide. Accordingly, we are convinced that the public interest will be served by the rule amendments we are adopting herein.

Implementation of the new rules

48. Applications involving the use of directional antennas will require considerably more resources to process than others, both from a personnel and computer processing standpoint. Budgetary constraints will severely limit our ability to process any significant number of applications involving directional antennas at this time. We therefore find it necessary to limit temporarily the number of applications we receive that involve short-spacing. We believe that this is best done by temporarily limiting the amount by which applicants may short-space to 8 kilometers (about 5 miles). We believe this limit will enable us to be responsive to the majority of applications which currently require consideration on a waiver basis and it will, moreover, assist us in identifying any unforeseen problems in the evaluation of these applications. Consistent with this short-term necessity, we will not consider applications involving greater amounts of short-spacing at this time. This temporary policy is stated in a Note following the table in new paragraph 73.215(e) of the Rules. Authority is delegated to the Chief, Mass Media Bureau to issue an Order to remove this Note when it is no longer necessary.

49. Also, pending the outcome of our proposal in MM Docket No. 88-375[17] to increase the maximum power of Class A FM stations to 6 kW, we will not accept applications which involve contour protection based on the current 3 kW Class A power limit. Because such applications could preclude the intended benefits of the power increase proposal for individual Class A stations, it would clearly be inappropriate to accept them until a decision concerning Class A power is final. However, we will accept applications based on the presumed use of an ERP of 6 kW and and antenna HAAT of 100 meters for Class A stations, as the potential preclusive effect of such applications on Class A facilities would be largely avoided. Our purpose in doing this is not to prejudge the outcome of the MM Docket No. 88-375 proceeding, but merely to preserve our options and the potential benefits intended by that proceeding. However, Class A applicants applying under Section 73.215 should be aware that they will be protected only to their actual facilities and therefore may not be able to take advantage of any rule changes that the Commission may adopt in MM Docket No. 88-375. We are adding a Note concerning this policy after paragraph 73.215(b)(2)(ii) of the rules we are adopting. This Note will be removed when final action concerning the Class A power increase is taken.

50. Applications submitted prior to the effective date of the rules we adopt today that include a request for waiver of Section 73.207 will be processed under the current minimum spacing rules only and not under the new contour protection rules. Applications submitted on or after the effective date must specify whether they are to be processed under the new contour protection rules. Amendments submitted on or after the effective date (including amendments to applications on file prior to the effective date) also must specify whether they are to be processed under the new contour protection rules. We believe that it would be improper for us to presume, without an explicit election, that an applicant chooses processing under the new contour protection rules, as this entails some risk that future modifications of its facilities might become restricted as the result of protection of actual, rather than maximum, facilities. Therefore, in the absence of a specific request by the applicant, including the required supplementary exhibit (*see* paragraph 35, *supra*, and Appendix C), we will presume that the applicant intends the application to be processed under the minimum spacing rules only and not under the new contour protection rules.

51. In accordance with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), a final regulatory flexibility analysis follows:

FINAL REGULATORY FLEXIBILITY ANALYSIS

I. Need and purpose of this action:

This action will provide applicants for facilities in the FM Broadcast Service with greater flexibility in the selection of transmitter/antenna sites, thereby permitting them to more precisely locate their signal coverage over areas of greater demographic interest. In some cases, it will permit the installation of facilities that would not be possible due to the lack of available sites at fully spaced locations.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No comments or reply comments were received which address the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected:

No other alternatives are available that would give licensees the flexibility in transmitter site location intended by this proceeding.

52. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.*, (1981)).

PAPERWORK REDUCTION ACT STATEMENT

53. The decisions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, and has been found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

ORDERING CLAUSE

54. Accordingly, IT IS ORDERED THAT effective **April 14, 1989,** or upon Office of Management and Budget approval of amendments to FCC Form 301 and FCC Form 340, whichever is later, Part 73 of the Commission's Rules IS AMENDED as set forth in Appendix A below. This action is taken pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 is amended by revising paragraph (a) to read as follows:

§ 73.207 Minimum distance separation between stations.

(a) Except for assignments made pursuant to §§73.213 or 73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and on nearby adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of §§73.213 or 73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (*See* §73.512 for rules governing the channel and location of Class D (secondary) assignments.)

* * * * *

3. 47 CFR 73.209 is amended by revising paragraph (b) and removing paragraph (c), as follows.

§ 73.209 Protection from interference.

* * * * *

(b) The nature and extent of the protection from interference afforded FM broadcast stations operating on Channels 221-300 is limited to that which results when assignments are made in accordance with the rules in this subpart.

4. A new section 47 CFR 73.215 is added, to read as follows:

§ 73.215 Contour protection for short - spaced assignments.

The Commission will accept applications that specify short-spaced antenna locations (locations that do not meet the domestic co-channel and adjacent channel minimum distance separation requirements of §73.207); *provided that*, such applications propose contour protection, as defined in paragraph (a) of this section, with all short-spaced assignments, applications and allotments, and meet the other applicable requirements of this section. Each application to be processed pursuant to this section must specifically request such processing on its face, and must include the necessary exhibit to demonstrate that the requisite contour protection will be provided. Such applications may be granted when the Commission determines that such action would serve the public interest, convenience, and necessity.

(a) *Contour protection.* Contour protection, for the purpose of this section, means that on the same channel and on the first, second and third adjacent channels, the predicted interfering contours of the proposed station do not overlap the predicted protected contours of other short-spaced assignments, applications and allotments, and the predicted interfering contours of other short-spaced assignments, applications and allotments do not overlap the predicted protected contour of the proposed station.

(1) The protected contours, for the purpose of this section, are defined as follows. For all Class B and B1 stations on Channels 221 through 300 inclusive, the F(50,50) field strengths along the protected contours are 0.5 mV/m (54 dBu) and 0.7 mV/m (57 dBu), respectively. For all other stations, the F(50,50) field strength along the protected contour is 1.0 mV/m (60 dBu).

(2) The interfering contours, for the purpose of this section, are defined as follows. For co-channel stations, the F(50,10) field strength along the interfering contour is 20 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For first adjacent channel stations (±200 kHz), the F(50,10) field strength along the interfering contour is 6 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For second adjacent channel stations (±400 kHz), the F(50,10) field strength along the interfering contour is 20 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited. For third adjacent channel stations (±600 kHz), the F(50,10) field strength along the interfering contour is 40 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited.

(3) The locations of the protected and interfering contours of the proposed station and the other short-spaced assignments, applications and allotments must be determined in accordance with the procedures of paragraphs (c), (d)(2) and (d)(3) of §73.313, using data for as many radials as necessary to accurately locate the contours.

(b) Applicants requesting short-spaced assignments pursuant to this section must take into account the following factors in demonstrating that contour protection is achieved:

(1) The ERP and antenna HAAT of the proposed station in the direction of the contours of other short-spaced assignments, applications and allotments. If a directional antenna is proposed, the pattern of that antenna must be

used to calculate the ERP in particular directions. *See* §73.316 for additional requirements for directional antennas.

(2) The ERP and antenna HAAT of other short-spaced assignments, applications and allotments in the direction of the contours of the proposed station. The ERP and antenna HAATs in the directions of concern must be determined as follows:

(i) For vacant allotments, contours are based on the presumed use, at the allotment's reference point, of the maximum ERP that could be authorized for the station class of the allotment, and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the station class of the allotment.

(ii) For existing stations that were not authorized pursuant to this section, including stations with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, and for applications not requesting authorization pursuant to this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in §73.211), and the antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply (*e.g.* zoning laws, FAA constraints, application of §73.213).

NOTE: Until further Notice, contours for existing Class A assignments, Class A applications not requesting authorization pursuant to this section, and Class A allotments are based on the presumed use of an ERP of 6000 Watts, and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to 100 meters. This temporary provision will be removed after the final resolution of proposals in MM Docket No. 88-375.

(iii) For stations authorized pursuant to this section, except stations with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the authorized ERP in the directions of concern, and HAATs in the directions of concern derived from the authorized standard eight-radial antenna HAAT. For stations with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, authorized under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in §73.211), and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

(iv) For applications containing a request for authorization pursuant to this section, except for applications to continue operation with authorized ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed, contours are based on the use of the proposed ERP in the directions of concern, and antenna HAATs in the directions of concern derived from the proposed standard eight-radial antenna HAAT. For applications to continue operation with an ERP that exceeds the maximum ERP permitted by §73.211 for the standard eight-radial HAAT employed, if processing is requested under this section, contours are based on the presumed use of the maximum ERP for the applicable station class (as specified in §73.211), and antenna HAATs in the directions of concern that would result from a non-directional antenna mounted at a standard eight-radial antenna HAAT equal to the reference HAAT for the applicable station class, without regard to any other restrictions that may apply.

NOTE: Applicants are cautioned that the antenna HAAT in any particular direction of concern will not usually be the same as the standard eight-radial antenna HAAT or the reference HAAT for the station class.

(c) Applications submitted for processing pursuant to this section are not required to propose contour protection of any assignment, application or allotment for which the minimum distance separation requirements of §73.207 are met, and may, in the directions of those assignments, applications and allotments, employ the maximum ERP permitted by §73.211 for the standard eight-radial antenna HAAT employed.

(d) Stations authorized pursuant to this section may be subsequently authorized on the basis of compliance with the domestic minimum separation distance requirements of §73.207, upon filing of an FCC Form 301 or FCC Form 340 (as appropriate) requesting a modification of authorization.

(e) The Commission will not accept applications that specify a short-spaced antenna location for which the following minimum distance separation requirements, in kilometers (miles), are not met:

Relation	Co - channel	200 kHz	400/600 kHz
A to A	82 (51)	42 (26)	25 (16)
A to B1	119 (74)	66 (41)	46 (29)
A to B	143 (89)	88 (55)	67 (42)
A to C2	143 (89)	84 (52)	53 (33)
A to C1	178 (111)	111 (69)	73 (45)
A to C	203 (126)	142 (88)	93 (58)
B1 to B1	138 (86)	88 (55)	48 (30)
B1 to B	175 (109)	114 (71)	69 (43)
B1 to C2	163 (101)	105 (65)	55 (34)
B1 to C1	200 (124)	134 (83)	74 (46)
B1 to C	233 (145)	169 (105)	105 (65)
B to B	211 (131)	145 (90)	71 (44)
B to C2	200 (124)	134 (83)	69 (43)
B to C1	241 (150)	169 (105)	77 (48)
B to C	270 (168)	195 (121)	105 (65)
C2 to C2	163 (101)	105 (65)	55 (34)
C2 to C1	196 (122)	130 (81)	74 (46)
C2 to C	224 (139)	169 (105)	105 (65)
C1 to C1	224 (139)	158 (98)	79 (49)
C1 to C	249 (155)	188 (117)	105 (65)
C to C	270 (168)	209 (130)	105 (65)

NOTE: Until further Notice, the Commission will not accept applications that specify short-spaced antenna locations pursuant to this section wherein the proposed distance separation is less than the normally required distance separation in §73.207 by more than 8 kilometers (5 miles). This temporary restriction will be removed when the Commission determines that available resources

are sufficient to allow the timely processing of additional applications proposing short-spaced locations using contour protection.

5. 47 CFR 73.311 is amended by revising paragraph (a) and adding a new paragraph (b)(4), as follows:

§ 73. 311 Field strength contours.

(a) Applications for FM broadcast authorizations must show the field strength contours required by FCC Form 301 or FCC Form 340, as appropriate.

(b) * * *

(4) In determining compliance with §73.215 concerning contour protection.

6. 47 CFR 73.316 is amended by revising paragraphs (b) and (c) as follows:

§ 73.316 FM antenna systems.

* * * * *

(b) *Directional antennas*. A directional antenna is an antenna that is designed or altered for the purpose of obtaining a non-circular radiation pattern.

(1) Directional antennas that have a ratio of maximum to minimum radiation in the horizontal plane of more than 15 dB will not be authorized.

(2) Directional antennas that have a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized.

(c) * * *

(1) A complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. It is not sufficient to label the antenna with only a generic term such as "dipole". A specific model number must be provided. In the case of individually designed antennas with no model number, or in the case of a composite antenna composed of two or more individual antennas, the antenna must be described as a "custom" or "composite" antenna, as appropriate. A full description of the design of the antenna must also be submitted.

(2) A relative field horizontal plane pattern of the proposed directional antenna. A single pattern encompassing both the horizontal and vertical polarization is required, rather than separate patterns for horizontal and vertical polarization. A value of 1.0 must *be* used to correspond to the direction of maximum radiation. The plot of the pattern must be oriented such that 0^0 corresponds to the direction of maximum radiation or alternatively, in the case of an asymmetrical antenna pattern, the plot must be oriented such that 0^0 corresponds to the actual azimuth with respect to true North. The horizontal plane pattern must be plotted to the largest scale possible on unglazed letter-size polar coordinate paper (main engraving approximately 7" x 10") using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10 to the Nth power. Values of field strength less than 10% of the maximum field strength plotted on that pattern must be shown on an enlarged scale. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas.

(3) A tabulation of the relative field pattern required in paragraph (c)(2) of this section. The tabulation must use the same zero degree reference as the plotted pattern, and must contain values for at least every 10^0. In addition, tabulated values of all maximas and minimas, with their corresponding azimuths, must be submitted.

(4) Sufficient vertical patterns to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. Complete information and patterns must be provided for angles of $\pm 10^0$ from the horizontal plane and sufficient additional information must be included on that portion of the pattern lying between $+10^0$ and the zenith and -10^0 and the nadir, to conclusively demonstrate the absence of undesirable lobes in these areas. The vertical plane pattern must be plotted on rectangular coordinate paper with reference to the horizontal plane. In the case of a composite antenna composed of two or more individual antennas, the pattern required is that for the composite antenna, not the patterns for each of the individual antennas.

(5) A statement that the antenna will be mounted on the top of an antenna tower recommended by the antenna manufacturer, or will be side-mounted on a particular type of antenna tower in accordance with specific instructions provided by the antenna manufacturer.

(6) A statement that the directional antennas will not be mounted on the top of an antenna tower which includes a top-mounted platform larger than the nominal cross-sectional area of the tower in the horizontal plane.

(7) A statement that no other antennas of any type are mounted on the same tower level as a directional antenna, and that no antenna of any type is mounted within any horizontal or vertical distance specified by the antenna manufacturer as being necessary for proper directional operation.

(8) In the case of applications for license upon completion of antenna construction, a statement from a licensed surveyor that the antenna has been installed pursuant to the manufacturer's instructions and is in the proper orientation.

* * * * *

APPENDIX B

List of Commenters

Hale Communications, Inc.
WGNS (AM) Radio Station
Ronald J. Grandmaison, P.E., Consulting Engineer
Doug C. McDonell, Technical
Susquehanna Radio Corp.
Hammett & Edison, Inc., Consulting Engineers
Karl D. Lahm, P.E., & Associates, Consulting

Engineers
Winfas, Inc.
Serge Bergen, Engineering Consultant
New Jersey Class A Broadcasters Association
Redwood Empire Stereocasters
Vir James, P.C., Broadcast Engineering Consultants
Hudson Group Limited Partnership of Pennsylvania
J.J. Taylor Companies, Inc.
WEDR, Inc. (FM radio station)
SIS Sound, Inc.
WIBF (FM) Radio Station
Scripps Howard Broadcasting Company
Fuller-Jeffrey Broadcasting Companies, Inc.
Louisiana Association of Broadcasters
Association of Federal Communications Consulting Engineers
Theodore G. Hammond
KRRV, AM and FM Radio stations
National Association of Broadcasters
Greater Media, Inc.
Bonneville International Corporation
Roy E. Henderson
Shamrock Broadcasting, Inc.
Association for Broadcast Engineering Standards, Inc.
Crain Broadcasting, Inc.
Infinity Broadcasting Corporation
Capitol Broadcasting Corporation
Association of Maximum Service Telecasters, Inc.
Edens Broadcasting, Inc.
Eastern Broadcasting Corporation
Massachusetts Class A Broadcasters Association
Kevin M. Fitzgerald
New City Communications Inc.
Central Broadcasting Company
Great Southern Broadcasting Company, Inc.

List of Reply Commenters
Chapman S. Root Revocable Trust
Greater Media, Inc.
Massachusetts Class A Broadcasters Association
Mid-Ohio Communications, Inc.
J.J. Taylor Companies, Inc.
Public Broadcasting Service and the
National Association of Public Television Stations

APPENDIX C

Applicants requesting processing pursuant to 47 C.F.R. §73.215 must submit this page and the required exhibits with FCC Form 301 ("Application for Authority to Construct or Make Changes in a Commercial Broadcast Station"), or FCC Form 340 ("Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station"), as appropriate.

Authorization Pursuant to 47 C.F.R. §73.215

If authorization pursuant to 47 C.F.R. §73.215 is requested, attach as an Exhibit a complete engineering study to establish the lack of prohibited overlap of contours involving affected stations. The engineering study must include the following:

Exhibit No. [ ]

(a) Protected and interfering contours, in all directions (360°), for the proposed operation.

(b) Protected and interfering contours, over pertinent arcs, of all short-spaced assignments, applications and allotments, including a plot showing each transmitter location, with identifying call letters or file numbers, and indication of whether facility is operating or proposed. For vacant allotments, use the reference coordinates as transmitter location.

(c) When necessary to show more detail, an additional allocation study utilizing a map with a larger scale to clearly show prohibited overlap will not occur.

(d) A scale of kilometers and properly labeled longitude and latitude lines, shown across the entire exhibit(s). Sufficient lines should be shown so that the location of the sites may be verified.

(e) The official title(s) of the map(s) used in the exhibit(s).

NOTE: Applicants not requesting processing pursuant to 47 C.F.R. §73.215 do not need to submit this page with their application.

FOOTNOTES

[1] The *Notice* stated that a proposal concerning short-spaced I.F.-related stations, if any, would be made subsequent to a decision in MM Docket No. 86-144 (*see* "Review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations", 3 FCC Rcd 1661 (1988), 53 Fed. Reg. 10259, March 30, 1988). Because the technical issues involved in I.F. interference may differ from those discussed herein (*e.g.*, the greater number of stations for which reception could be impaired), and because these issues have not received public scrutiny and comment, we will continue to require I.F.-related stations to meet the separation distances specified in §73.207. Applicants seeking a waiver of the I.F. separation requirements of §73.207 must continue to show that fully-spaced or less short-spaced sites are not available and that grant of the waiver is in the public interest. Demonstrations that predicted contours will not overlap will not constitute grounds for a waiver.

[2] *See Notice of Inquiry*, 2 FCC Rcd 3141 (1987), 53 Fed. Reg. 20430, June 1, 1987. Originally comments and reply comments were due July 17, 1987 and August 3, 1987, respectively, but the comment and reply comment periods were extended by *Order* (2 FCC Rcd 5673 (1987), 52 Fed. Reg. 27570, July 22, 1987) to August 31, 1987, and September 15, 1987, respectively.

[3] *See* Table A in Section 73.207(b)(1) of the Commission's Rules.

[4] The use of directional FM antennas is already provided by the Rules to a limited extent (*see* Section 73.316). They may be used by commercial FM licensees for reasons other than to justify short spacing, such as to concentrate signals over desired areas. Grandfathered short-spaced stations use directional antennas to permit facility modifications (*see* Section 73.213). Also, directional antennas are commonly used by non-commercial educational FM stations to provide protection to the service contours of other co-channel and adjacent channel stations. As a result, about 10% of all FM stations currently employ directional antennas. Thus, they cannot be considered a novelty in the FM broadcast service.

[5] *See Notice of Proposed Rule Making*, 3 FCC Rcd 1820 (1988), 53 Fed. Reg. 12779, April 19, 1988. Original comment and reply comment deadlines of May 27, 1988 and June 27, 1988, respectively, were extended by *Order* (53 Fed. Reg. 22036, June 13, 1988) to August 5, 1988, and September 5, 1988, respectively.

[6] For example, we did not contemplate the use of directional antennas as a means of justifying an increase of facilities to a higher class (*see* reply comments of the Massachusetts Class A Broadcasters' Association).

[7] We would further note that the ability to upgrade probably becomes less important as the FM service matures. Many stations able to upgrade have already done so in response to various marketplace and regulatory incentives.

[8] Some of the comments appear to envision that short-spaced stations would be subject to contour protection requirements only in the directions of the other short-spaced stations, the inference being that such stations would be afforded protection to maximum facilities in non-short-spaced directions. However, this was not our intent in raising this matter in the *Notice*. While this action could afford some short-spaced stations with an improved potential for upgrade, it would reduce the incentive to install the best possible facilities initially. This approach also would involve considerable administrative complexity, since we would need to keep track of what area is actually receiving service, and what area is potentially capable of receiving service. Accordingly, we continue to believe that the best procedure is to protect actual short-spaced (or directional) facilities. However, when two facilities are not short-spaced to each other, even if both are otherwise subject to contour protection pursuant to §73.215, meeting the minimum spacing requirements of §73.207 is sufficient, regardless of whether there is actual contour overlap between them.

[9] Because there is no lower class, Class A stations would theoretically be permitted to short-space by an amount determined by their minimum permitted facilities. In practice, however, this flexibility may be limited by the requirement that they be able to provide city-grade service over their principal community of license.

[10] Short-spacings of less than 0.5 km are not cognizable and therefore do not require a waiver. *See* §73.208(c). *See also* Ronette Communications Corp., 51 RR 2nd 229, Broadcast Bureau, 1982.

[11] The contour protection criteria similar to that specified for the non-commercial service, but modified to include appropriate limits for Class B and Class B1 stations, were given in Appendix C to the *Notice*. We would point out that the co-channel and first, second and third adjacent channel desired-to-undesired (D/U) contour protection ratios applicable to the commercial and non-commercial services are the same, with the exception of the ratio applied to the second adjacent channel. In the commercial service it is -40 dB and in the non-commercial service it is -20 dB. Because the non-commercial standard is the more stringent, we will apply it to future commercial authorizations that are contour protection dependent.

[12] In this and in the subsequent examples, only co-channel spacing requirements are discussed, since they offer the greatest potential for change. However, it is important to remember that smaller reductions would be permitted in the case of adjacent channel separations. As a practical matter, the need to meet adjacent channel spacing requirements may often constrain the amount of co-channel short-spacing that is possible.

[13] Adopting this suggestion would also impose significant administrative burdens on our processing staff due to the need to determine the locations of the actual and potential contours and to store them in our computers. (*See also* Footnote 8, *supra*.)

[14] We emphasize that an application that does not meet the minimum distance separation requirements of §73.207 to another assignment will be treated as an encroaching station regardless of the status of the assignment being encroached upon.

[15] Stations licensed as restricted §73.215 facilities which subsequently meet all of the minimum separation requirements for all co-channel and adjacent channel facilities, either through modification of their own facilities or through modification of the co-channel or adjacent channel facilities, may regain status as §73.207 facilities by applying to the Commission using FCC Form 301 or FCC Form 340, as appropriate.

[16] For example, if an applicant must consider ten other facilities, and would be short-spaced to one of the ten, the applicant must demonstrate contour protection only with respect to the one with which it would be short-spaced; meeting the minimum spacing requirements is sufficient with respect to the other nine.

[17] *See Notice* of *Proposed Rule Making*, MM Docket No. 88-375, 3 FCC Rcd 5941 (1988), 53 Fed. Reg. 38743, October 3, 1988.

DISSENTING STATEMENT OF COMMISSIONER JAMES H. QUELLO

In Re: Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignment by Using Directional Antennas.

Consistent with my separate statement to the *Notice of Proposed Rulemaking* in this proceeding, I must disagree with the majority's decision to authorize short-spaced facilities in the FM band.

The Commission's decision ultimately rests on the concept that we can achieve equivalent contour protection for FM stations. This is precisely the method now employed in the AM band. As the level of interference in the AM band demonstrates, contour protection has not served this Commission well. I firmly believe that this decision will increase congestion and decrease the quality of service to the public. Indeed, the item acknowledges that there will be an average reduction in current spacing requirements of about 14 percent. Moreover, because stations employing short spacing techniques will be protected only to their contours, the flexibility inherent in the existing table of allotments will be lost.

I fully recognize that the item does not propose to change the table of allotments today. However, once numerous licensees take advantage of this proposal, you have in effect reallocated much of the existing band. I doubt it will be very long before short-spacing becomes an allotment tool. This proposal goes far beyond present use of short-spaced facilities in the noncommercial FM band. It is a first step toward elimination of the table of allotments.

The site problems confronting radio broadcasters today are very real. Rather than opening the floodgates, I would have preferred to adopt a case-by-case approach where an applicant seeking to short-space its antenna would be required to demonstrate that it has lost its site due to zoning changes, loss of land or other circumstances beyond its control. I believe this approach would have properly balanced both the need for flexibility and respect for the table of allotments.

SEPARATE STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS

In Re: Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignment by Using Directional Antennas.

I support this decision because it represents a measured response to the problems FM licensees have in finding suitable transmitter sites. Licensees now face four regulatory obstacles in selecting a site: zoning restrictions, air safety regulations, our principal city coverage rule, and our mileage separation rules. This decision relaxes the mileage separation rules and thereby gives licensees more flexibility.

The proposal in this proceeding was far-reaching: today's decision is much more conservative. We have *not* reduced the protection granted to Class B and B1 stations. We are *not* using directional antennas as an allotment tool; we will continue to make new allotments only if they fully comply with our mileage separation rules. We are *not* allowing unlimited short-spacing. Licensees will be required to meet the mileage separations applicable to the next lower class of stations. In addition, we have discouraged casual short-spacing by providing that short-spaced stations, unlike other stations, will receive protection only for their actual facilities.

Directional antennas are hardly a new idea. We have authorized them in the non-commercial FM bank with success. We authorize them here in a measured way. This modest change in our rules will not lead to the "AM-ization" of the FM band. Instead, it will give existing licensees more options in choosing sites and ensure the continuation of excellent FM service with little or no additional interference.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER

January 19, 1989 **Released: February 22, 1989**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert W. Hughes, Chairman and President
Prime Cable
Suite 3000
600 Congress
Austin, Texas 78701

Dear Mr. Hughes:

This letter constitutes a Notice of Apparent Liability for a forfeiture issued pursuant to Section 634 of the Communications Act of 1934, as amended. 47 U.S.C. 554.

Section 76.73(b)(5) of the Commission's rules requires cable operators to: "[c]onduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity . . . ." Section 76.75 states that an employment unit's EEO program should reasonably address itself to a number of areas, including: recruitment of minorities and women whenever there is a job vacancy; evaluation of turnover; promotions; use of female and minority entrepreneurs; and an analysis of the results of EEO efforts. These provisions directly implement Section 634(c) of the Communications Act.

On May 18 to 20, 1988, an EEO audit of Prime's headquarters unit (HQ-55, Austin, Texas) revealed that Prime apparently had not complied with the rule provisions noted above for the years covered by the 1986,[1] 1987 and 1988 annual employment reports. Review of documents assembled by Prime and interviews with Prime officials indicated that: the unit did not contact potential sources of minority and female applicants whenever a job vacancy occurred; the unit did not evaluate its turnover against the availability of minorities and women; the unit did not have a program to ensure that promotions were made in a non-discriminatory manner; the unit did not encourage minority and female entrepreneurs to conduct business with all parts of its operation; and the unit did not analyze the results of its EEO efforts. Rather, it appeared from the audit that, prior to March 1988, the unit's EEO efforts were confined to dissemination of an employee handbook and review of the unit's statistical profile in conjunction with the preparation of the company's annual employment reports.

In view of the foregoing, it appears that Prime repeatedly violated the statutory and rule provisions cited above. The maximum forfeiture for the extensive violations from 1986 to 1988 would result in a36,000 fine. However, in determining whether a maximum forfeiture or some lesser amount should be imposed, we must consider the guidelines noted in Section 1.80 of the Commission's Rules which provide as follows:

In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

After reviewing the facts in this case and the requirements of Section 1.80, we have concluded that a forfeiture of18,000 is appropriate here. First, there is no evidence that your company has engaged in intentional discrimination in the time period under review. In this regard, the three largest units of your company all have employed minorities and women during the subject period and the headquarters unit has hired and employed minorities and women in positions of significance. Second, we note that, in 1987, you voluntarily reported that you had not complied with several EEO requirements. Third, there is no history of prior EEO offenses. Accordingly, pursuant to Section 634(f)(2) of the Communications Act of 1934, as amended, you are hereby advised of your apparent liability for forfeiture of18,000 for your repeated failures over a period of 180 days to comply with Sections 76.73 and 76.75 of the Commission's rules in the manner described above. The amount specified was reached after a consideration of the factors set forth in Section 634 of the Communications Act and Section 1.80 of the Commission's Rules.

In regard to the forfeiture proceeding, you may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this letter. Any comments relating to your ability to pay should include those financial items set forth in the noted attachment.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

[1] By letter dated July 11, 1988, the staff rescinded the unit's 1986 EEO certification.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-497

In the Matter of

Amendment of Part 65 of the
Commission's Rules to
Prescribe Components of the
Rate Base and Net Income
of Dominant Carriers

ORDER ON RECONSIDERATION

Adopted: January 30, 1989; Released: February 22, 1989

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. Ten parties have filed petitions for reconsideration and/or clarification[1] of our *Report and Order* [2] establishing regulatory procedures for dominant carriers in Part 65 of our rules. Six parties have filed comments in support of the petitions, two in opposition, and nine parties filed reply comments. [3] In this Order, we generally affirm our decision regarding regulatory procedures. To the extent indicated below, however, we grant the petitions for reconsideration and clarification. Specifically, we: (1) modify our requirements for the calculation of cash working capital; (2) eliminate the requirement to reduce the rate base for compensated absences; (3) permit the inclusion of the full material and supplies inventory in the rate base; (4) specifically provide for the inclusion of Rural Telephone Bank Stock in the rate base; and (5) make certain minor changes to Part 65 and provide further clarification as needed.[4]

2. The *Order* prescribed rules regarding the ratemaking treatment for various types of costs incurred by telecommunications common carriers. These rules do not deviate, for the most part, from our decision in Phase II of Docket 19129,[5] and two well-established regulatory principles -- the "used and useful" standard[6] and the "benefit-burden test".[7] The *Order* did not generate a new set of rate base and net income inclusion principles, but it updated, clarified and consolidated established principles with the goal of simplifying them and applying them to all carriers subject to Part 65. The *Order* attempted to properly balance the interests of ratepayers and investors, refine the rate base and net income principles previously established by this Commission, and incorporate any new principles necessary to reflect the current telecommunications industry environment.

3. The petitions raise a wide range of issues primarily with regard to the determination of a carrier's interstate rate base. We discuss these issues individually in Section II.

II. THE RECONSIDERATION PETITIONS, COMMENTS AND DISCUSSION

A. Cash Working Capital (CWC) Study Techniques

4. CWC is an estimate of the average amount of investor-supplied capital needed to provide funds for a carrier's day-to-day operations. One method for determining CWC is a lead-lag study which measures cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items.[8] In our *Order*, we required Class A carriers to compute their CWC requirements using full lead-lag studies and we permitted Class B carriers[9] to use either full lead-lag studies or a simplified procedure (Simplified Formula Method) outlined in our rules.[10]

1. Positions of the Parties

5. In seeking reconsideration, several parties request that we limit the requirement that full lead-lag studies be used to calculate CWC to the Bell Operating Companies (BOCs). These parties claim that, contrary to the belief expressed by the Commission in the *Order*, lead-lag studies would be burdensome[11] for "independents,"[12] none of which have been required to perform such studies for interstate ratemaking purposes in the past. They further argue that, contrary to our contention in the *Order*, independents seldom prepare such studies for state ratemaking purposes,[13] and when they do prepare such studies, they are not identical to the requirements for interstate lead-lag studies. These parties propose that we allow independents to use simpler and less burdensome methods for determining their CWC.

6. The parties offer several alternative methods to reduce the burden of determining CWC. GTE proposes that all independents (*i.e.*, Class A and Class B, alike) be allowed to use the Simplified Formula Method, or, alternatively, that the results of lead-lag studies performed by the BOCs be used as a surrogate to determine the CWC for the large independents. USTA and United suggest that individual carriers should perform the revenue lag portion of the lead-lag study but be permitted to substitute the average expense lag of the BOCs in lieu of computing their own expense lag. They claim this would reduce the burden considerably because the expense lag is more difficult to determine than the revenue lag. Contel also recommends use of the Simplified Formula Method by all independents or use of the average BOC expense lag or some other reasonable surrogate for the expense lag portion.

7. Several parties object to the requirement that small carriers use the Simplified Formula Method to calculate CWC requirements in lieu of full lead-lag studies. These parties claim that this method is too complex and burdensome for small carriers.

8. In its filing in opposition to the petitions, MCI argues that all requests for reconsideration of the decision to require full lead-lag studies for determining CWC should be denied. MCI claims that the requirement for such studies by large carriers will yield the most accurate CWC results and will not create a burden for the carriers since they are already required to prepare such studies for state ratemaking purposes. In support of this contention,

MCI cites pages 440-441 of the National Association of Regulatory Utility Commissioners' (NARUC) 1986 Annual Report on Utility and Carrier Regulation which indicates the approved methods of determining working capital for state jurisdictions.

9. AT&T does not object to expanding the use of the Simplified Formula Method to all independents or to permitting the use by those carriers of either the BOC average net lag or expense lag. However, AT&T states that this Commission needs to specify the method to be used and reject the proposal of some petitioners which would give carriers the flexibility to choose among various methodologies.

10. In reply, the local exchange carriers (LECs) and USTA reiterate their arguments that full lead-lag studies are burdensome and should not be required for independents. SNET states that MCI has not accurately interpreted the NARUC report it cites because that report indicates that many states use alternatives to lead-lag studies. USTA acknowledges MCI's claim that the Simplified Formula Method does not afford as precise a CWC determination as a full lead-lag study. However, USTA contends that the cost of obtaining such precision for each LEC outweighs the net aggregate benefit of full lead-lag studies. USTA claims that the Simplified Formula Method would be applied to actual revenues and expenses of each individual LEC so that CWC requirements would still be based on individual company characteristics.

2. Discussion

11. In the *Order*, we decided that all Class A carriers must base their CWC on full lead-lag studies because we believed that such an approach would yield the most accurate CWC results while not unduly burdening the carriers. In the pleadings, the carriers have made two arguments that lead us to reconsider our decision. First, the petitioners indicate that very few of the independents have a routine requirement to prepare lead-lag studies for intrastate ratemaking purposes.[14] As a result, an annual[15] interstate lead-lag study requirement would place a substantial burden on these carriers. Second, because CWC has such a small impact on the carriers' overall revenue requirements, even moderate precision in the CWC is adequate. For example, in the 1988 Tariff Review Plan (TRP), the interstate revenue requirement associated with CWC for all Tier 1 carriers is approximately 100 million, while the total interstate revenue requirement is nearly20 billion. As a result, even an exaggerated 20% error[16] in the CWC would yield an overall error in the interstate revenue requirement of only one tenth of one percent. Considering the additional costs that would be incurred by the independents (and passed on to their customers through tariffs) of mandating use of lead-lag studies and the minimal improvement in the overall revenue requirement that would result from their use, we do not believe it is appropriate to require independents to base their CWC on full lead-lag studies.

12. For the same reasons, we are not convinced that there is adequate justification for continuing to mandate that the BOCs determine their CWC by full lead-lag studies. As a result, we will revise our rules to allow all Class A carriers to compute their CWC by use of either full lead-lag studies or the Simplified Formula Method.

13. In the *Order*, we adopted the Simplified Formula Method for Class B carriers to reduce the burden on smaller carriers. Some parties express concern, however, that this method may be too complex and, therefore, too burdensome for these carriers. After weighing their concerns and the relatively minor impact on the carriers' overall revenue requirement of calculating the CWC less precisely, we conclude that a simpler method of determining CWC is appropriate for all or some of the Class B carriers.

14. Several parties have also suggested that we develop a more simplified approach that would reflect the actual results of larger carriers. Such an approach has merit, and we have developed a method under which a Class B carrier's CWC could be determined using an industry "standard time period" of lead or lag (Standard Allowance Method). This standard lead or lag would be applied to an individual Class B carrier's cash operating expense to determine its CWC.[17] Our review of the data available at this Commission which relate carrier CWC and operating expenses indicates that a 15 day lag period is an appropriate standard for the present.[18] Thus, a Class B carrier will be permitted to include in the rate base a standard cash working capital allowance equal to 15 days of its cash operating expenses. If, however, a Class B carrier believes that the Standard Allowance Method result is insufficient, it may elect to follow the Simplified Formula Method or perform a full lead-lag study. We believe the standard allowance should be reviewed and revised periodically, as necessary, and, in order to do so in the most efficient manner, we delegate this task to the Chief of the Common Carrier Bureau. This review will take place when the carriers file their annual financial reports with this Commission. We expect the Chief of the Common Carrier Bureau to issue a letter to all subject carriers in the event there is to be a change in the number of days used for the Standard Allowance Method.

15. Although we accord carriers the flexibility to choose between methods, we are concerned that a carrier may shift between methods in order to achieve the highest CWC result, rather than to achieve the proper balance between the most accurate result and the least administrative cost. As a result, we direct the carriers to advise the Commission of changes in CWC methods in future tariff filings and their reasons for such change. We direct the Bureau to review such changes and decide, on a case-by-case basis, whether they should be permitted.

16. We also revise §65.820(e)(5) of our rules to describe more specifically the expenses to be included in the Simplified Formula Method and in general to make the formula easier to understand. The *Order* stated specifically that interest expense should be included in lead-lag studies, but it did not specifically mention interest expense in the formula. Also, the *Order* specified the deduction of depreciation expense from operating expenses to determine cash operating expenses but it did not mention amortization. Since amortization is a non-cash expense, it should also be deducted. We revise the rule to specifically mention that interest should be included in cash expenses and that both depreciation and amortization should be deducted from total operating expenses to determine cash operating expenses. Other changes clarify the formula by describing it on a step-by-step basis.

B. Inclusion of Cash Balances in CWC Determinations

17. In the determination of CWC, as set forth in Docket 19129, minimum bank balances and working cash advances[19] are added to the lead-lag study results because they constitute cash amounts that must be maintained in

addition to the cash flows which are considered in the lead-lag studies. No other cash balances are allowed in the rate base.

1. Positions of the Parties

18. BellSouth and Southwestern Bell have pointed out that our *Order* did not discuss cash balances in the determination of CWC, but that previous orders did allow certain minimum cash balances and working cash advances in the rate base. They believe that recognition of cash balances is warranted because they claim no firm can operate with a zero cash balance. These parties request that this Commission modify Section 65.820 of the rules to recognize cash balances as an element of CWC.

19. MCI and AT&T oppose BellSouth's and Southwestern Bell's petitions. MCI and AT&T interpret these petitions as requests to include their entire cash balances as an element of the interstate rate base. MCI claims that all appropriate cash balances are already fully reflected in the LECs' CWC calculations. It claims that allowances of cash balances as a discrete item would serve as an incentive for LECs to maintain excessive cash balances because they could then earn the authorized rate of return on the cash rather than the lower short-term interest rates available from banks or government securities.

20. AT&T points out that while this Commission, in both the *Docket 19129 Phase II Decision* [20] and the *Docket 16258 Decision*,[21] allowed cash balances to be added to the CWC allowance, they were only allowed to the extent that such balances represented minimum bank balances and working cash advances. AT&T notes that this Commission found in Docket 16258 that lead-lag studies measure the cash requirement of the carrier's day-to-day operations and adding cash balances to that amount, beyond minimum bank balances and working cash advances, would represent cash in excess of the carrier's requirements.

21. Southwestern Bell states in its reply that despite MCI's contention, there are legitimate cash needs, such as minimum bank balances and working cash advances, that do not enter in any way into the lead-lag study computations.

2. Discussion

22. Although our *Order* was silent on the treatment of minimum bank balances and working cash advances, it was not our intention to depart from our established policy of including them as part of a carrier's CWC. We did not mention these items because they were included in the lead-lag methodology for determining CWC. We are not certain whether BellSouth and Southwestern Bell are requesting that additional cash balances (*i.e.*, amounts over and above minimum bank balances and working cash advances) be included in the CWC determinations. Nevertheless, we will clarify our position. In Docket 19129, we thoroughly considered this issue and decided that only minimum bank balances and working cash advances should be included in CWC. In the current proceeding, we see no justification for changing this long-standing policy. Therefore, we will continue to allow carriers to add minimum bank balances and working cash advances to their CWC determination.

C. Exclusion of Non - Cash Items From Lead - Lag Studies

23. In the past, this Commission has always excluded non-cash items from lead-lag studies. Parties to this proceeding raised the issue of whether non-cash items should be included in lead-lag studies and we found in our *Order* that they should not be included. The Notice of Proposed Rule Making (NPRM)[22] did not raise this issue nor has an adequate record been developed on this issue.

1. Positions of the Parties

24. BellSouth requests us to reconsider our decision to exclude non-cash items from lead-lag studies. It claims that the exclusion of non-cash items (such as depreciation, deferred taxes, and net income, which it refers to as the cost of common stock equity) in lead-lag studies effectively prevents recovery of the cost of some of the capital used to finance the provision of service. BellSouth states that depreciation expense is not collected from customers until they pay their bills, and that this results in a revenue lag. It contends that unless the capital needed to finance this revenue lag in the recovery of depreciation expense is reflected in the rate base, a portion of investor-supplied capital will not have an opportunity to earn a return. BellSouth claims this same reasoning also applies to deferred taxes and the cost of common stock equity. It states that although accumulated deferred taxes recorded on an accrual basis are deducted from the rate base, cash is not recovered from customers until they pay their bills. As for the cost of common stock equity, BellSouth contends that such earnings are immediately reinvested as additional common equity. It believes that such reinvested earnings are investor-supplied capital that must be allowed to earn a return, and the lead-lag study should reflect the delay in the receipt of these elements of the cost of service from customers.

25. Ameritech, Bell Atlantic and Pacific Bell support BellSouth's petition to include non-cash items in the lead-lag study. Ameritech states that investors are entitled to a return on their entire interstate investment and that this Commission's exclusion of non-cash items amounts to a permanent disallowance of any return on a portion of investor-supplied working capital. In addition to those non-cash items named by BellSouth, Ameritech claims that investment tax credits (ITCs) are another example of a non-cash item which should be considered in the lead-lag study.

26. AT&T and MCI both oppose the inclusion of non-cash expenses in lead-lag studies. AT&T states that BellSouth made these same arguments in its comments and reply comments in response to our *NPRM* in this proceeding and that we properly rejected those arguments in the *Order*. AT&T further states that, in the *Docket 19129 Phase II Initial Decision*,[23] we stated that the purpose of a CWC allowance is to provide only for the current day-to-day needs of the business and not for any of the capital requirements, and that non-cash items should not be considered in lead-lag studies because they do not involve cash outlays necessary to pay current, day-to-day expenses. AT&T claims that, in effect, BellSouth is suggesting that a lead-lag study should be structured to produce the same result as a balance sheet analysis of investor-supplied funds. AT&T contends that this Commission has consistently rejected such a balance sheet approach as the basis for calculating CWC because the cash and cash items on hand identified in the balance

sheet are not adequate measures of actual cash requirements. AT&T estimates that, if BellSouth's proposed methodology were used by all carriers, the industry-wide interstate rate base would increase by over2 billion. MCI states that depreciation, like any other non-cash expense, does not involve any payment by BellSouth to any other entity. MCI contends that there is no requirement for working capital to meet these non-cash expenses. It states that it cannot be in the public interest for ratepayers to compensate BellSouth by paying a rate of return on expenses for which there is no capital requirement.

27. In reply comments, the LECs reiterate their position that non-cash items should be included in the CWC determinations. BellSouth also argues that, in the *Order*, this Commission made fundamental changes to the rate base determinations adopted in Docket 19129, most notably, the requirements that unmatured interest on debt be included in lead-lag studies and that the rate base should be reduced by other deferred credits arising from the provision of telephone service. It claims that these rule changes eliminate sources of capital that tended to offset the nonrecognition of unpaid amounts of depreciation, deferred taxes and net income under the Docket 19129 rate base principles. The LECs contend that the new rate base rules, unless modified on reconsideration, will result in the nonrecognition of a large amount of investor-supplied capital in the industry-wide rate base. The LECs argue that AT&T and MCI oppose the inclusion of non-cash items in the CWC determinations, not because of ratemaking philosophy, but merely in an attempt to hold down their own cost of service. Finally, the LECs contend that the inclusion of non-cash items in the lead-lag study will not have the same effect as the adoption of the balance sheet approach advocated by AT&T in Docket 19129.

2. Discussion

28. We reject the arguments of those parties who wish us to include "non-cash" items in the lead-lag studies. In our *Docket 19129 Phase II Initial Decision*, we decided that non-cash items such as depreciation and deferred taxes should be excluded from lead-lag studies, and we reaffirmed that decision in our *Order* in this proceeding.

29. As noted by AT&T, many of BellSouth's arguments are the same as those BellSouth made in its comments and reply comments to our *NPRM* in this proceeding which we rejected in the *Order*. Accordingly, we need not address them further in this reconsideration order.

30. BellSouth's claim that a portion of investor-supplied capital will not have an opportunity to earn a return if non-cash items are not included in lead-lag studies is simply incorrect. For example, BellSouth contends that depreciation expense should be included in lead-lag studies because depreciation is recovered through revenues and these revenues are not collected from customers until they pay their bill, resulting in a revenue lag. BellSouth is not concerned here with a lead or lag related to depreciation expense but instead is concerned about a revenue lag. However, revenue lags are already considered in lead-lag studies regardless of their underlying cost support. Moreover, depreciable assets are included in the rate base and earn a return until the costs are recovered through depreciation. Thus, we find that our *Order* allows carriers to earn a return on all investor-supplied capital associated with depreciable assets and that depreciation expense should not be included in lead-lag studies. We find that this same reasoning applies to the other non-cash items that BellSouth and the supporting commentors recommended for inclusion in lead-lag studies.

31. In its reply comments, BellSouth makes one additional point in support of its contention that non-cash items should be included in lead-lag studies. It argues that our *Order* made fundamental changes to the ratebase determinations adopted in Docket 19129 and specifically noted the requirements that unmatured interest on debt be included in lead-lag studies and that other deferred credits arising from the provision of telephone service be deducted from the ratebase. BellSouth claims that these changes eliminate sources of capital that tended to offset the non-recognition of non-cash items under Docket 19129.

32. We reject BellSouth's claim. The change we have made regarding unmatured interest is a refinement fully consistent with the basic concept of lead-lag studies advanced in Docket 19129. Interest expense is a cash expense for which there is a significant lag between the time service is provided and the time interest is paid. Likewise, the deduction of other deferred credits from the rate base is consistent with the underlying principle of Docket 19129 that cost-free capital should be deducted from the rate base. These changes are consistent with the underlying principles of Docket 19129, and the treatment of unmatured interest does not serve as a basis for inclusion of non-cash items in lead-lag studies. Inclusion of such items would be fundamentally at odds with the underlying concepts for determining CWC requirements through lead-lag studies.

D. Accrued Compensated Absences

33. The term compensated absences refers to employee time off with pay, such as vacations and sick leave. Under generally accepted accounting principles (GAAP), compensated absences that have been earned but not yet paid are charged to expense in the period they are earned and the amount owed to employees is recorded as a liability. In the *GAAP Order*,[24] we decided that compensated absences should be recorded as a liability on a carrier's books consistent with generally accepted accounting principles. The *GAAP Order* required carriers to record the initial "catch-up" entry[25] as a liability and a deferred charge, with the deferred charge amortized over a ten year period beginning in 1988. Our *Order* instructed carriers to deduct from the rate base the differences arising in subsequent years between the liability and the related deferred charge balance.

1. Positions of the Parties

34. Several carriers object to the treatment of compensated absences mandated by our *Order*. AT&T, Cincinnati Bell, Pacific Bell, and USTA suggest that it would be more appropriate and less burdensome to include compensated absences in lead-lag studies rather than deducting a portion of accrued compensated absences from the rate base. These parties believe lead-lag study treatment would be more appropriate because there are no material differences between compensated absences and other accrued expenses such as wages, accrued taxes, and other items which are included in lead-lag studies. BellSouth and AT&T allege that the rate base deduction treatment in our *Order* would necessitate identification of revenue lags in payments by customers attributable to compensated absences which would be administratively

complex and make lead-lag studies more difficult to verify.[26] Pacific Bell and BellSouth also suggest the associated unamortized deferred charges should be included in the rate base if the expenses associated with compensated absences are recognized in lead-lag studies.

2. Discussion

35. On reconsideration, we agree that compensated absences are analogous to other operating expenses which are to be reflected in lead-lag studies. We therefore prescribe this treatment as opposed to requiring a rate base reduction for the difference between the liability and deferred charge. However, we cannot agree that, because compensated absences are included in lead-lag studies and recognized as operating expenses, it necessarily follows that it would be appropriate to include the unamortized portion of the original "catch-up" entry in the rate base. In the case of compensated absences, this treatment would be inappropriate because the deferred charge does not arise from an investment by the shareholders or an interest bearing obligation.

E. Material and Supplies

36. In our *Order*, we decided that material and supplies held for maintenance purposes or used for short-term construction projects would be included in the rate base. Material and supplies used on construction projects not completed within one year would not be included in the rate base until such projects are placed in service. Material and supplies used in specific long-term construction projects would be cleared to plant under construction and given the same treatment as the project itself, including capitalization of an allowance for funds used during construction until the project is placed in service.

1. Position of the Parties

37. Several parties request that we modify our treatment of the cost of material and supplies inventories held for use on long-term construction projects. The commenting parties focus on two main concerns: (1) the difficulty of differentiating material and supplies associated with long-term construction projects from other material and supplies; and (2) the propriety of excluding these material and supplies from the ratebase.

38. The parties claim material and supplies held for long-term construction projects are difficult to differentiate from other material and supplies because carriers generally purchase such items in bulk to take advantage of volume discounts. They contend that such items are not identified with specific projects until they are issued from stock for use on a project on an as needed basis. This, they claim, makes it difficult or impossible to classify materials and supplies on hand into long-term and short-term categories. They allege that this makes it necessary to implement burdensome and costly procedures or studies to segregate inventories associated with long-term construction projects based on past issuances of stock from inventories. Ameritech claims that this requirement conflicts with this Commission's objective of establishing a rate base formula which is uncomplicated and simple to administer.

39. In addition to the overall burden of identifying materials and supplies associated with long-term construction, USTA and GTE state that this requirement is particularly difficult for non-BOC local exchange carriers because these carriers have not been required to make this distinction in the past and therefore would have the added burden of developing and implementing new studies to achieve the segregation of these costs. GTE further states that the amount of material and supplies held for long-term construction projects is such a small part of the rate base that the administrative burden and cost of separation would outweigh any conceivable value of making such a distinction.

40. In addition to the difficulty of identifying the cost of material and supplies held for long-term construction projects, the parties also question the propriety of deducting this cost from the rate base. USTA indicates that under our *Order*, carriers would not be able to earn a return on the cost of material and supplies allocated to long-term construction projects and would not be able to accrue an allowance for funds used during construction (AFUDC) for this cost. AFUDC could not be accrued because this cost is carried in the material and supplies account rather than the long-term plant under construction account.[27] USTA states that, since these materials and supplies ultimately benefit ratepayers, carriers should be allowed to earn a return on this investment either in the form of a current return on rate base or an accrual of AFUDC. Ameritech claims that this inability to either earn a return or accrue AFUDC results in confiscation for this portion of invested capital.

41. MCI states that USTA has not presented any valid reason for departing from the requirement that material and supplies held for long-term construction projects be excluded from the rate base. MCI claims that just as long-term projects do not meet the concept of "used and useful", material and supplies associated with long-term projects do not meet that standard either. MCI believes that this Commission's current mechanism of handling material and supplies is adequate to meet the needs of carriers and ratepayers.

2. Discussion

42. We conclude that the carriers have expressed a reasonable concern about the treatment of the cost of material and supplies held for long-term construction projects. As a matter of equity, the cost of material and supplies excluded from the rate base because it is associated with long-term construction projects should be eligible for accrual of AFUDC. Under our rules, however, such costs are not eligible for AFUDC because they are not identified with specific construction projects and transferred to the long-term plant under construction account.

43. To resolve this inequity, we have considered two possible approaches. First, we could allow carriers to accrue AFUDC on the cost of material and supplies excluded from the rate base. Second, we could allow carriers to earn a return on the entire balance in the material and supplies account even though some of these material and supplies will ultimately be issued for use on long-term construction projects.

44. After weighing the advantages and disadvantages of these two approaches, we have concluded that the second is preferable. We recognize that the first, *i.e.*, allowing carriers to accrue AFUDC on material and supplies held for long-term construction projects, is consistent with our past position since it recognizes that these material and supplies are ultimately intended for use in long-term construction, excludes the cost from the current rate base

under the used and useful principle, and is consistent with our treatment of other costs associated with long-term construction. On the other hand, this approach has several drawbacks. First, it burdens the BOCs with the costly process of determining the amount of material supplies inventories that should be assigned to long-term construction and would require non-BOC carriers to develop and implement the procedures necessary to make such a determination. Second, it requires a departure from our current rule which permits carriers to accrue AFUDC only on amounts carried in Account 2004, Plant Under Construction - Long Term. Finally, it requires development of a method of assigning the AFUDC accrued on the inventory to individual long- term construction projects because the inventory balance on which the AFUDC is calculated is not identified by construction project.

45. We prefer to allow carriers to include the entire balance of material and supplies account in the rate base. Although this approach is a departure from our previous position, it resolves the current inequity and avoids the complications and burdens which, as discussed in the preceding paragraph, would be involved if carriers were allowed to accrue AFUDC on material and supplies held for long-term construction. Moreover, our analysis indicates that the impact of this change is relatively immaterial. The material and supplies account represents only about 1% of the rate base, and its impact on the revenue requirement is approximately four tenths of one percent.[28] Further, what we are considering here is not whether the entire material and supplies account should be included or excluded from the rate base but whether the small portion associated with long-term construction should be included or excluded. We believe that, currently, less than one fourth of the industry's material and supplies are being allocated to long-term projects. As a result, we estimate that including this amount in the rate base would add less than one tenth of one percent to the revenue requirement. This impact is effectively reduced since AFUDC would not be further computed nor cumulatively added to the rate base as the first alternative would suggest.

46. Based on the information before us, we do not agree with MCI's assessment that valid reasons have not been presented for departing from our requirement that material and supplies associated with long-term construction be excluded from the rate base. Instead, we believe that carriers should be allowed to include the entire balance of material and supplies in the rate base. This treatment is consistent with our goal of simplifying the rate base and produces a result that is equitable to both investors and ratepayers.

47. In reaching this position, we continue to be concerned that carriers make prudent investments in material and supplies and that carriers not have an incentive to over-invest in material and supplies beyond reasonable on-going needs. We believe our concerns can be met, however, by monitoring the balances in the materials and supplies account to assure that the relative size of the inventory does not change significantly and by comparing balances of individual carriers with industry averages. Any growth that appears unreasonable will be subject to further scrutiny and possible disallowance.

F. Deferred Charges, Other Deferred Credits and Deferred Taxes

48. Our *Order* required carriers to deduct the interstate portion of other deferred credits from the interstate rate base and to exclude from the rate base other deferred charges, except for deferred equal access costs, unless the carrier can make a showing in the ratemaking process (*i.e.*, as part of a tariff filing) that such deferred charges benefit the ratepayers in the provision of telecommunications services.

1. Positions of the Parties

49. Generally, the LECs state that it is unfair for this Commission to deduct deferred credits from the rate base while not allowing the offsetting inclusion of deferred charges as an addition to the rate base. USTA states that deferred taxes, in particular, should not be deducted from the rate base if such treatment is inconsistent with the handling of the assets to which they relate. It contends that only those net deferred taxes arising from rate base items should be treated as rate base adjustments. Finally, Contel requests that we amend Section 65.820 (c), stating that the rule should "be amended to provide that the interstate portion of items authorized by state regulators for inclusion in the intrastate rate base of non-fully subject companies be allowed for ratemaking purposes in the interstate rate base".

50. MCI disagrees with the claim that it is unfair to deduct deferred credits from the rate base without adding deferred charges to the rate base. It states that deferred charges should not be included unless proven "used and useful" in providing telecommunications services and that deferred credits should continue to be deducted. MCI further states that no party has provided any justification to include deferred charges in the rate base and, even if they could, the proper procedural remedy would be to request a waiver rather than reconsideration.

2. Discussion

51. We have not been convinced by the LECs' arguments to change our rate base treatment of deferred charges and other deferred credits. Their comments seem to presuppose that by including deferred charges in the rate base some symmetry will be achieved between the deferred charges that are included and the deferred credits that would be deducted from the rate base. As a practical matter, the deferred charges that appear on a carrier's balance sheet rarely bear any direct relationship to the deferred credits. As a result, our policy of automatically deducting the interstate portion of deferred credits related to the provision of telecommunications services from the rate base is not a satisfactory reason to include automatically the interstate portion of deferred charges in the rate base. Consistent with our *Docket 19129 Phase II Decision*, we continue to believe that deferred charges, except for those related to deferred equal access costs,[29] should not be included in the rate base unless an adequate showing can be made that such deferred charges benefit the ratepayers. We also continue to believe that the interstate portion of deferred credits which arise from the provision of telecommunications services should be deducted from the interstate rate base because deferred credits represent a source of zero cost capital.

52. USTA's arguments that deferred taxes should not be deducted from the rate base if the deduction would be inconsistent with the handling of the assets to which they relate are the same as those made in comments and reply

comments to our *NPRM* in this proceeding which we rejected in the *Order*. Accordingly, we need not address them further in this reconsideration order.

53. Contel apparently believes that non-fully subject carriers[30] are precluded from seeking permission to include deferred charges in the rate base. This is simply incorrect. We have stressed from the beginning that the rate base rules and policies adopted in this proceeding apply to *all* dominant carriers, including non-fully subject carriers.[31] Moreover, non-fully subject carriers remain subject to Sections 201-205 of the Act so that such carriers will have the opportunity to make the showing contemplated by our rules. No distinction exists to preclude non-fully subject carriers from seeking to include deferred charges in the rate base and we see no need to establish rules just to specifically address non-fully subject carriers. Thus before a specific deferred charge can be included as part of a carrier's rate base, specific approval from this Commission is required.

G. Allowance *for Funds Used During Construction*

54. AFUDC provides a method of compensating carriers for funds expended on long-term construction projects until they become part of the rate base. AFUDC is capitalized during construction and included in the cost of utility plant when the construction work is placed in service. The entire cost of the plant (including AFUDC) is included in the rate base and is recovered through depreciation charges over the life of the plant. Section 32.2000(c)(x) of our rules states that AFUDC includes the cost of debt and equity funds used in the construction of telecommunications property designed to be completed in over one year. Our *Order* reaffirmed our *Docket 19129 Phase II Decision* requirement that the compound prime rate of interest be used for accruing AFUDC.

1. Positions of the Parties

55. BellSouth and Southwestern Bell seek reconsideration of the use of the prime rate, rather than the overall rate of return, for accruing AFUDC. They claim that the use of the prime rate is inconsistent with the requirements of the *GAAP Order* and Section 32.2000(c)(x) of our rules. BellSouth contends that the use of the prime rate does not provide investors with an opportunity to earn the cost of capital on the investment to which it is applied. It also states that when the prime rate exceeds the allowed overall rate of return, customers would be required to pay a capitalized return higher than the authorized rate of return during the period that plant is being constructed. Pacific Bell supports these arguments and states that it does not borrow short-term debt at prime rates to fund specific projects, but rather it funds all projects from its overall capital structure.

2. Discussion

56. In the *Docket 19129 Phase II Decision*, we stated that, since long-term construction projects are not considered used and useful, investors are not entitled to receive the prescribed rate of return from ratepayers until the plant is placed in service. We found, however, that it is in the public interest that investors receive a reasonable compensation for the funds they have provided to finance construction projects which will, when placed in service, benefit future ratepayers. We determined the appropriate rate for such reasonable compensation to be the cost of short-term capital which we decided would be calculated by compounding interest during construction at the prime rate.[32] Our rationale, then, is to compensate investors for the full cost of construction rather than to provide a return on investment in the usual sense during the period of construction. We did not propose in this proceeding to reconsider this rationale or otherwise to reconsider the allowable rate to be applied in determining AFUDC. Accordingly, we will not consider further the carriers' arguments on this issue.

57. We also reject the carriers' argument that the use of the prime rate is inconsistent with our decision in the *GAAP Order* and with the requirements in Section 32.2000(c)(x) of our rules. Those rules provide that AFUDC is to apply to both debt and equity funds. These rules also provide that the appropriate rate--currently the compounded prime rate reflective of short term borrowing--shall be applied to both debt and equity funds used during construction, not just the debt portion as was proposed in the *GAAP Order*. In fact, the appropriate rate was considered in the *GAAP Order* only to the extent that full adoption of GAAP in this matter would have resulted in a similar rate but applied only to the debt portion of a construction project. This Commission believed that the appropriate rate of capitalizing AFUDC is the current prime rate, considering the short term nature of telecommunication projects, and that it should be applied to the entire construction project not just the difficult to determine debt portion only. Parties commenting in this proceeding did not address fully the careful balancing of the various components making up AFUDC nor did they provide sufficient arguments to warrant further study. Thus, we will not change from our current policy. However, the adoption of GAAP was rejected with respect to this matter, and the manner of determining AFUDC was left unchanged from findings in Docket 19129.

H. Telecommunications Plant Adjustments

58. When telecommunications plant is acquired from another regulated telecommunications entity, it is recorded in the plant account at its original cost less the related depreciation reserve. Original cost as applied to telecommunications plant means the actual cost of property when it was first dedicated to use by a regulated telecommunications entity, whether by the current owner or by a predecessor. A difference between the purchase price of telecommunications plant and the amount recorded based on original cost less depreciation is recorded in Account 2005, Telecommunications Plant Adjustment. This Commission has historically held that telecommunications plant adjustments should not be allowed in the rate base unless a carrier can specifically justify the amounts. The amounts recorded in Account 2005 should be written off to Account 7370, Special Charges or amortized over a reasonable period through charges to Account 7360, Other Nonoperating Income, unless the Commission grants approval to amortize to Account 6565, Amortization Expense - Other. Our *Order* indicated that Account 2005 would generally be excluded from the rate base. However, we acknowledged that there would be exceptions to this rule if a carrier properly justified inclusion of such amounts. We also stated that carriers would be allowed to include Account 2005 in the rate base to the extent such inclusions have been allowed by this Commission under Section 221(a) of the Communications Act (47 U.S.C. §221(a)).

1. Positions of the Parties

59. CP National, NTCA and USTA seek reconsideration of our treatment of telecommunications plant adjustments.

60. CP National states that this Commission's procedures for approval of telecommunications plant adjustments are burdensome, impose additional costs on ratepayers, and may result in the building of duplicate facilities. CP National claims that Section 221(a) of the Act provides for elaborate, burdensome and costly procedures for authority to consolidate telephone companies. It believes that this Commission should not require additional proceedings to approve specific rate base items after authority to consolidate has been received under Section 221(a). CP National contends that ratepayers benefit from acquisitions at fair prices and that our initial test for inclusion of acquisition adjustments should be a presumption of prudent investment decisions. CP National also claims that our case-by-case approach presents a number of unresolved questions. It states that the standard for approval under this approach is vague and fails to provide adequate notice of the minimum showing required for approval.

61. CP National also claims that, to the extent the requirement of case-by-case approval is required of non-fully subject carriers, that requirement conflicts with this Commission's limited jurisdiction under Section 2(b)(2) of the Communications Act. CP National claims that the requirement appears to apply to all carriers even though this Commission has previously limited application of the Uniform System of Accounts to fully subject carriers. CP National believes that, to the extent this Commission may have jurisdiction over non-fully subject carriers, we should adopt an alternative requirement that presumes prudent investment decisions and includes such amounts in revenue requirements.

62. CP National claims that the National Exchange Carrier Association (NECA), as the tariff filing entity, "reflects the input from its members and is not an acquiring company".[33] CP National states that this raises "the question of what entity has standing to seek approval".[34] Finally, CP National questions on "what authority can NECA deny a participant's claimed revenue requirement" if NECA's rates are just and reasonable. CP National states that "the appropriate role of a common filing entity has not been addressed".

63. Finally, CP National claims that our *Order* should apply prospectively and, to the extent carriers have previously included acquisition adjustments in the rate base and settlements, this Commission should grandfather such amounts to permit continuation of recovery of these past amounts.

64. NTCA states that this Commission should adopt procedures for expeditious determination of the reasonableness of telecommunications plant adjustments. It claims that we either failed to address or else rejected proposals NTCA made in response to the *NPRM* on this matter. NTCA states that, when a state commission has already made a determination regarding the benefit to the ratepayer, this Commission should not require a second proceeding to justify approval. NTCA also wants this Commission to specify a procedure for simple and quick Commission determination when there is no state commission determination available. It suggests that small companies should be able to file an independent appraiser's statement attesting that the price paid for the property accurately reflects its value. NTCA claims it is not requesting this Commission to abandon its obligations to ratepayers, but is requesting adoption of reasonable procedures commensurate with the risk that the interstate ratepayers will be burdened by the minor portion of an unwise investment.[35]

65. USTA states that our requirements are likely to result in significant repercussions within the LEC community, particularly among small carriers. It recommends that this Commission continue to recognize within the interstate rate base the interstate portion of telecommunications plant adjustments that are already included in the calculation of the interstate revenue requirements by NECA or by individual LECs. USTA claims this would have no adverse impact on rates and would avoid any unexpected ramifications. USTA also recommends that this Commission recognize and give effect to the public interest determinations of states when a state has acted favorably on a telecommunications plant adjustment request. It contends that, if permission has been granted for intrastate ratemaking or for settlement purposes, that should be sufficient justification for similar treatment for the interstate jurisdiction.

2. Discussion

66. In our *Docket 19129 Reconsideration Order*, we stated that regulatory bodies have long recognized that acquisition of the property of one utility by another utility presents the possibility for abuse, or at least confuses the question of the proper value to be placed on such property for ratemaking purposes.[36] We have always placed on the carrier the responsibility of justifying the inclusion of amounts claimed for plant acquisition adjustments. This requirement has not been modified or reversed by later Commission orders and the arguments presented on reconsideration have not persuaded us to make such a change. Therefore, we continue to believe that inclusion of such amounts must be determined on a case-by-case basis and require the acquiring carrier to demonstrate that the price paid for property accurately reflects its value to the ratepayers or is otherwise in the public interest.

67. We do not agree with those parties who suggest that this Commission should recognize all telecommunications plant adjustments approved by a state commission or that, absent state approval, we rely on the statement of an independent appraiser attesting that the price paid for property accurately reflects its value. We cannot abdicate our statutory responsibility by relying wholly on state approval.[37] However, since the states examine telecommunications plant transactions closely, we will give great weight to state approval of property acquisition adjustments.

68. We believe that the suggestion to rely on an independent appraiser to determine whether to recognize a property acquisition adjustment is also unacceptable. Although an appraisal might assign a value to the property, it does not necessarily justify the departure from original cost rate base valuation[38] which this Commission has historically applied. A primary reason for the adoption of original cost rate base valuation was to prevent utilities from inflating plant and equipment costs, and thus make the consumer pay more than the original cost of the plant and equipment. We fail to see how reliance on an appraiser's valuation addresses this concern.

69. Although several parties claim that our procedures for approval of plant acquisition adjustments are burdensome, impose costs on ratepayers, and may result in the building of duplicate facilities, no party has supplied any data or quantification to support their claims. Moreover, we believe that our existing rules may resolve some of their concerns. Section 32.2000(b) provides for an exception to the use of original cost and permits property, plant and equipment acquired from a nonaffiliated entity to be accounted for at acquisition cost if the purchase price is less than100,000 for Class A companies or25,000 for Class B companies. Thus, in those situations, carriers would not be required to record amounts paid in excess of original cost as plant acquisition adjustments. In the future, there may be an increase in requests for approval of plant acquisition adjustments with a resulting increase in burden for this Commission's staff to review these requests. If disposing of requests in a timely manner becomes burdensome, the Commission can, of course, review the100,000 and25,000 limits we now have in Part 32 and adjust them.

70. One of the major complaints against our treatment of plant acquisition adjustments is that our case-by-case standard is vague. While parties ask that we develop specific criteria for approval of plant acquisition adjustments, we believe that the nature of the acquisitions and the circumstances under which they take place are highly diverse and specific criteria can not be developed for all situations.

71. As a general rule, however, plant acquisition adjustments resulting from the purchase of plant with traffic[39] require a higher degree of justification than those resulting from the purchase of plant only. When a carrier purchases plant without traffic from another carrier at an equal or lower price than it could obtain the same plant from other sources, both the carrier and the ratepayers stand to benefit from such an acquisition assuming the plant is needed. Therefore, rate base recognition would be easier to justify. However, when the purchase involves plant with traffic, a showing must be made why ratepayers should pay rates based on a higher value for equipment and service that are the same as before the acquisition.[40]

72. In seeking approval of plant acquisition adjustments, the purchasing carrier should provide all pertinent data related to the acquisition. At a minimum, this includes the purchase price of the plant, its original cost (book value), a description of the plant, the reason for the purchase, the effect on the ratepayer, the results of a valuation study and the results of any request for state commission approval.

73. In order to expedite the implementation of these requirements in a manner that will not be burdensome for the carriers, we have decided to apply them prospectively as CP National suggests and to grandfather existing book acquisition adjustments as both CP National and USTA suggest. Basically, grandfathering existing acquisition adjustments means that we will continue to recognize within the interstate rate base the interstate portion of plant adjustments that have already been included in the calculation of interstate revenue requirements by NECA or by individual LECs. Since these existing acquisition adjustments have already been included in earlier rate filings, this process should not have an adverse impact on rates.

74. We reject CP National's argument that the case-by-case approach should apply only to fully subject carriers. Under Section 2(b)2 of the Act, non-fully subject carriers must comply with Sections 201 through 205 of the Act. Those sections establish carriers' tariffing requirements. Under our rules for telecommunications plant adjustments, we are simply permitting any carrier to request authority to include property acquisition adjustment amounts in the rate base and we are requiring carriers to accompany such a request with a showing why these additional costs should be borne by ratepayers. CP National also seeks guidance as to the appropriate procedure for seeking a property acquisition adjustment. We clarify that it is not NECA's responsibility to seek a plant acquisition adjustment for a member carrier. Rather, the individual carriers should seek such authority. Carriers should do so by letter to the Common Carrier Bureau which includes their showing in support of the request. We delegate authority to the Bureau to dispose of these requests. NECA should not permit the inclusion of any additional amounts of plant acquisition adjustments from its members unless the carrier receives approval for such inclusion from this Commission. When we approve the inclusion of a carrier's plant acquisition adjustments, we will furnish of a copy of our approval to NECA.

I. Rural Telephone Bank Stock

75. Rural Telephone Bank Stock (RTB Stock) represents equity investment in the Rural Telephone Bank. LECs who obtain financing from the Rural Telephone Bank are required to make an equity investment in the bank by purchasing Class B Stock in an amount equal to five percent of the principal amount of the loan. Part 36 of our rules provides for the separation of RTB Stock. Our *Order* did not specifically mention RTB Stock.

1. Positions of the Parties

76. Contel, NTCA and USTA ask this Commission to clarify our rules to ensure the inclusion of RTB Stock in the interstate rate base. NTCA states that investment in RTB Stock has been historically considered an operating investment and included in the rate base. It contends that recent revisions to Part 69 of the Commission's rules include specific rules for the apportionment of this investment. NTCA claims that for consistency and to avoid any confusion, explicit reference to RTB Stock should be made in Part 65. USTA states that Class B Stock has been classified for ratemaking purposes as an operating investment because of the requirement that LECs who obtain financing from the Rural Telephone Bank must make an equity investment in the bank. USTA contends that in 1975, NARUC adopted a resolution that concurred with this treatment.

2. Discussion

77. Even though we did not specifically mention Rural Telephone Bank Stock in our *Order* amending Part 65, it was never our intention to exclude this item from the rate base. Because this stock represents investor-provided funds used as an operating investment, it should be included in the rate base consistent with our treatment of Rural Telephone Bank Stock in Section 36.172 of the Separations Manual. Therefore, we amend Part 65 to make specific reference to this investment. However, we wish to remind carriers that any profit realized from the sale of the stock or from dividends should be included in Account 7160, Other Operating Gains and Losses, and thereby serve to benefit ratepayers.

J. Separations Rules

1. Positions of the Parties

78. Contel, United and USTA state that the instructions contained in our Part 65 rules for jurisdictionally apportioning rate base components are inconsistent with our Part 36 Separations procedures. Section 65.830(b) states that "the interstate portion of the deferred taxes, customer deposits, compensated absences and other deferred credits shall be determined by multiplying the sum of such funds by the interstate plant factor". The interstate plant factor is calculated by dividing the company's interstate plant in service by the total plant in service. However, Section 36.506 of the rules provides that deferred taxes recorded in Account 4100 and 4340 are apportioned among the operations on the basis of the separations of the related plant accounts. These parties state that applying an interstate plant factor under Part 65 will produce a result different from that determined under our Part 36 rules. USTA recommends that the Commission delete Sections 65.830(b) and (c) from Part 65 and rely on the separations process. BellSouth, Cincinnati Bell and Pacific Bell support the position of Contel, United and USTA that all jurisdictional separations rules belong in Part 36 of our rules.

2. Discussion

79. We agree with those parties who state that the proper place to address jurisdictional separations is in Part 36 of our rules. Therefore, we amend Part 65 to eliminate any conflicts with the Separations Manual.

K. Application of the Regulatory Flexibility Act

1. Positions of the Parties

80. NTCA notes its "continuing disagreement" with our conclusion that the Regulatory Flexibility Act (RFA) is not applicable to small carriers, and claims that our decision to apply the RFA procedures on an informal basis herein is inconsistent with our commitment to Congress to utilize the 'formal' procedures of the RFA. NTCA contends that this Commission has not addressed in a final regulatory flexibility analysis the issues raised by the comments in response to the initial RFA analysis. NTCA also states that this Commission has not provided reasons why alternatives which NTCA proposed to minimize the impact on small entities were rejected. NTCA also requests clarification of Paragraph 89 of our *Order* which states that our rule changes will have an indirect effect on approximately 1370 other carriers because interstate pooling and settlement procedures compel the use of these procedures. NTCA wants to know if the statement that there will be an indirect effect on companies in the NECA pools could mean either that NECA will be required to adjust the rate base justifying its tariffs, or that it will be required to modify its settlement procedures, or both.

2. Discussion

81. In response to NTCA's clarification request, we note that this proceeding will require NECA to adjust the rate base justifying its tariffs and modify its settlement procedures accordingly. As to NTCA's concerns about the RFA analysis, we believe that our approach to the issues herein has reflected an effort to minimize the impact on small entities. For example, by permitting Class B carriers to use either the Class B Formula for CWC or an amount equivalent to 15 days of cash operating expenses, the burden associated with lead-lag studies will be eliminated for small carriers. The extensive analysis we have provided in both the *Order* and in the preceding paragraphs demonstrates our commitment to consider the impact of our actions, and to discuss what alternatives are available and why certain alternatives have been rejected. We have again reviewed the concerns that NTCA has expressed about our actions in this proceeding and conclude that in each instance it has received a full airing of its position and a reasoned analysis of why we agree or disagree with its alternative.

III. PAPERWORK REDUCTION ACT

82. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new burden upon the public.

IV. ORDERING CLAUSES

83. Accordingly, IT IS ORDERED, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. §405, That the petitions filed by BellSouth, Contel, CP National, GTE, NTCA, OPASTCO, SNET, Southwestern Bell, United and USTA ARE GRANTED to the extent discussed herein, and otherwise ARE DENIED.

84. IT IS FURTHER ORDERED, That under the authority contained in Sections 4(i), 4(j) 201-205 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) 201-205 and 220, Part 65, Interstate Rate of Return Prescription Procedures and Methodologies, IS AMENDED as shown in the Appendix below effective **August 28, 1989** and the rules and policies adopted in this proceeding are prescribed for all dominant carriers.

85. IT IS FURTHER ORDERED that the petitions for partial waiver filed by Rochester Telephone on September 21, 1988, the United Telephone System Companies on June 20, 1988 and by Lincoln Telephone and Telegraph Company on May 20, 1988 ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSIONS

Donna R. Searcy
Secretary

APPENDIX

Part 65 of Title 47 of the CFR is amended as follows:

1. The authority citation for Part 65 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, and 403.

2. Section 65.820 is amended to read as follows:

§65.820 Included Items.

(a) Telecommunications Plant. The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction-Short Term), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization.

(b) Material and Supplies. The interstate portion of assets summarized in Account 1220.1 (Material and Supplies).

(c) Noncurrent Assets. The interstate portion of Class B Rural Telephone Bank stock contained in Account 1402 (Investment in Nonaffiliated Companies) and the interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets), Account 1438 (Deferred Maintenance and Retirements), and Account 1439 (Deferred Charges) only to the extent that they have been specifically approved by this Commission for inclusion. Otherwise, the amounts in accounts 1401 - 1500 shall not be included.

(d) Cash Working Capital. The average amount of investor-supplied capital needed to provide funds for a carrier's day-to-day interstate operations. Class A carriers may calculate a cash working capital allowance either by performing a lead-lag study of interstate revenue and expense items or by using the formula set forth in paragraph (e) of this section. Class B carriers, in lieu of performing a lead-lag study or using the formula in paragraph (e), may calculate the cash working capital allowance using a standard allowance which will be established annually by the Chief, Common Carrier Bureau. When either the lead-lag study or formula method is used to calculate cash working capital, the amount calculated under the study or formula may be increased by minimum bank balances and working cash advances to determine the cash working capital allowance. Once a carrier has selected a method of determining its cash working capital allowance, it shall not change to an optional method from one year to the next without Commission approval.

(e) In lieu of a full lead-lag study, carriers may calculate the cash working capital allowance using the following formula.

(1). Compute the weighted average revenue lag days as follows:

(a) Multiply the average revenue lag days for interstate revenues billed in arrears by the percentage of interstate revenues billed in arrears.

(b) Multiply the average revenue lag days for interstate revenues billed in advance by the percentage of interstate revenues billed in advance. (Note: a revenue lead should be shown as a negative lag).

(c) Add the results of (a) and (b) to determine the weighted average revenue lag days.

(2). Compute the weighted average expense lag days as follows:

(a) Multiply the average lag days for interstate expenses (*i. e.*, cash operating expenses plus interest) paid in arrears by the percentage of interstate expenses paid in arrears.

(b) Multiply the average lag days for interstate expenses paid in advance by the percentage of interstate expenses paid in advance. (Note: an expense lead should be shown as a negative lag).

(c) Add the results of (a) and (b) to determine the weighted average expense lag days.

(3). Compute the weighted net lag days by deducting the weighted average expense lag days from the weighted average revenue lag days.

(4) Compute the percentage of a year represented by the weighted net lag days by dividing the days computed in (3) above by 365 days.

(5) Compute the cash working capital allowance by multiplying the interstate cash operating expenses (*i. e.*, operating expenses minus depreciation and amortization) plus interest by the percentage computed in (4) above.

3. Section 65.830 is amended to read as follows:

§65.830 Deducted Items.

(a) The following items shall be deducted from the interstate rate base.

(1) The interstate portion of deferred taxes (Accounts 4100 and 4340).

(2) The interstate portion of customer deposits (Account 4040).

(3) The interstate portion of unfunded accrued pension costs (Account 4310).

(4) The interstate portion of other deferred credits (Account 4360) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(b) The interstate portion of deferred taxes, customer deposits and other deferred credits shall be determined as prescribed by Part 36 of our rules.

(c) The interstate portion of unfunded accrued pension costs shall bear the same proportionate relationship as the interstate/intrastate expenses which give rise to the liability.

FOOTNOTES

[1] We have received petitions for reconsideration from BellSouth Corporation, South Central Bell Telephone Company and Southern Bell Telephone and Telegraph Company (BellSouth), Contel Corporation (Contel), CP National Corporation (CP National), GTE Service Corporation and its affiliated domestic operating companies (GTE), the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO), Southern New England Telephone Company (SNET), Southwestern Bell Telephone Company (Southwestern Bell), United Telephone System Companies (United), and the

United States Telephone Association (USTA). A petition for clarification or reconsideration was received from the National Telephone Cooperative Association (NTCA).

[2] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, *Report and Order*, 3 FCC Rcd 269 (1987) (*Order*).

[3] The Ameritech Operating Companies (Ameritech), the Bell Atlantic Telephone Companies (Bell Atlantic), Central Telephone Company (Centel), Cincinnati Bell Telephone Company (Cincinnati Bell), Pacific Bell, and Western New Mexico Telephone Company, Inc., (Western New Mexico) have filed comments in support of the petitions. American Telephone and Telegraph Company (AT&T) and MCI Telecommunications Corporation (MCI) have filed oppositions to the petitions. Reply Comments have been filed by Bell Atlantic, BellSouth, Contel, GTE, Lincoln Telephone and Telegraph Company (Lincoln), SNET, Southwestern Bell, United and USTA.

[4] Lincoln Telephone and Telegraph Company, Rochester Telephone Corporation, and United Telephone System Companies filed petitions for partial waiver of the rules we established in the *Order*. These carriers request that we waive Section 65.820(d) of our rules which requires Class A carriers to conduct lead-lag studies to calculate their cash working capital (CWC) requirements. Lincoln requests permission to use the formula which Class B carriers are permitted to use instead of performing lead-lag studies. United and Rochester each propose to calculate their individual revenue lags and would apply the 1987 average expense lag of the Regional Bell Operating Companies to derive net lag days. Since we are revising our rules to allow all Class A carriers to compute their CWC by use of either full lead-lag studies or the Simplified Formula Method, a waiver for Lincoln is unnecessary. Even though we will not allow United and Rochester to use the average expense lag of the RBOCs, we are revising our rules to eliminate the requirement for the performance of lead-lag studies and providing an alternative, namely the Simplified Formula Method, which we believe will be acceptable to United and Rochester. Thus, because of our decision in this *Order*, we rule that the petitions filed by Lincoln, Rochester, and United are dismissed. *See* note 11, *infra*.

[5] American Telephone and Telegraph Co., 64 FCC 2d 1 (1977) (*Docket 19129 Phase II Decision*), *recon.*, 67 FCC 2d 1429 (1978) (*Docket 19129 Reconsideration Order*).

[6] The "used and useful" standard denotes property dedicated to the efficient conduct of a utility's business, presently or within a reasonable period. This standard reflects the principles that owners of public utilities must receive an opportunity to be compensated for the use of their property in providing a public service and that ratepayers must not be forced to pay a return on investment that does not benefit them directly. *Docket 19129 Phase II Decision*, 64 FCC 2d at 47.

[7] The "benefit-burden test" is based on the principle that the party who bears the financial burden of a particular utility activity should also reap the benefits resulting therefrom. *Docket 19129 Phase II Decision*, 64 FCC 2d at 66 (*citing Democratic Central Committee v. Washington Metropolitan Area Transit Commission*, 485 F. 2d 786 (D.C. Cir. 1973), *cert. denied sub nom. Transit System, Inc. v. Democratic Central Committee*, 415 U.S. 935 (1974)).

[8] Three additional terms which are frequently used in lead-lag analysis are "expense lag", "revenue lag", and "net lag". Expense lag refers to the average net lag of all of a carrier's cash expenses. Revenue lag refers to the average net lag of a carrier's revenues. Net lag refers to the net of a carrier's expense lag and revenue lag.

[9] As specified in Section 32.11(a) of our rules, a Class A carrier is one having annual revenues from regulated telecommunications operations of 100 million or more. A Class B carrier is one having less than 100 million in such revenues.

[10] *See* Section 65.820(d).

[11] Four carriers provided estimates of the burden of preparing lead-lag studies. Rochester Telephone Corporation estimates that 800 hours of consultant time would be required at a cost of 100,000. *Petition for Partial Waiver*, filed by Rochester Telephone Corporation, September 21, 1988. United estimates that three work-years would be required. *Petition for Partial Waiver*, filed by the United Telephone System Companies, June 20, 1988. Lincoln estimates two work-years. *Emergency Petition for Partial Waiver*, filed by the Lincoln Telephone and Telegraph Company, May 20, 1988. GTE estimates five work-years. *Ex Parte* Presentation filed by the GTE Telephone Companies, June 13, 1988.

[12] An "independent" is a local exchange carrier not affiliated with a BOC.

[13] For example, in its reply comments GTE states it had to perform lead-lag studies for intrastate ratemaking purposes only six times over the last three years for its 31 jurisdictions.

[14] *See, e.g.*, footnote 13, *supra*.

[15] Our current interstate access tariff process calls for an annual revenue requirement determination and, thus, an annual CWC determination.

[16] A 20% error figure was selected for illustrative purposes. We believe, however, that the Simplified Formula Method is sufficiently detailed to yield CWC error rates much lower than 20%.

[17] A carrier's total annual cash operating expenses are divided by 365 days to determine the average daily cash operating expenses. A carrier's average daily cash operating expenses are multiplied by the standard cash working capital allowance (in this case 15 days) to derive its CWC determination.

[18] We consider 15 days to be a reasonable allowance based on our analysis of the CWC requirements contained in the 1988 Tariff Review Plans (TRPs) of the Tier I carriers. The 15 days of cash operating expenses represent the equivalent of what the Tier I carriers are receiving.

[19] Working cash advances are those maintained at carrier business offices for the purpose of servicing customers or conducting routine business.

[20] *Docket 19129 Phase II Decision*, 64 FCC 2d at 76.

[21] American Telephone and Telegraph Co., 9 FCC 2d at 44-45 (1967) (*Docket 16258 Decision*).

[22] Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Bases and Net Income of Dominant Carriers, *Notice of Proposed Rule Making*, 2 FCC Rcd 332 (1987).

[23] American Telephone and Telegraph Co., 64 FCC 2d 131 (1976) (*Docket 19129 Phase II Initial Decision*).

[24] Revision of the Uniform System of Accounts of Telephone Companies to accommodate generally accepted accounting principles, 102 FCC 2nd 964 (1985) (*GAAP Order*).

[25] The initial "catch-up" entry represents a carrier's cumulative liability for all compensated absences earned but not taken by employees as of January 1, 1988.

[26] Even though our *Order* does not provide for lead-lag study treatment of compensated absenses, BellSouth assumes that our treatment would require a carrier to adjust its rate base to recognize the revenue lag related to compensated absences. BellSouth states that this adjustment to the rate base is needed

to recognize the number of days this compensated absences expense remains continuously unpaid by the customer. *See*, BellSouth Reply Comments at 7-8.

[27] Section 32.2000 (c)(x) of the rules only permits accrual of AFUDC on the balance in Account 2004, Telecommunications Plant Under Construction -- Long Term.

[28] Based on information provided in the historical year data in the 1988 Tariff Review Plan the total material and supplies inventory was350 million compared with a total rate base of32.0 billion. The revenue requirement associated with material and supplies is approximately70 million compared to a total revenue requirement of19.3 billion. Thus, the total revenue requirement impact of the material and supplies inventory is .4%.

[29] This Commission has already found that unamortized equal access expenses should be allowed to earn the authorized rate of return. Petitions for Recovery of Equal Access and Network Reconfiguration Costs, *Memorandum Opinion and Order*, FCC 85-628 (released December 9, 1985), *recon. denied in part and granted in part*, 1 FCC Rcd 434 (1986).

[30] A non-fully subject carrier, as that term is used herein, is a communications common carrier that engages in interstate communications solely as described in Section 2 (b) of the Communications Act of 1934, as amended. These carriers are subject to Sections 201-205 of the Act.

[31] *See, e.g., Notice of Proposed Rulemaking*, 2 FCC Rcd 332, para. 6 (1987).

[32] *Docket 19129 Phase II Decision*, 64 FCC 2d at 60.

[33] CP National Comments at 5.

[34] Although CP National does not specify what "approval" is being sought, we assume it is approval to include telecommunications plant adjustments in the rate base.

[35] NTCA Comments at 4.

[36] *Docket 19129 Reconsideration Order*, 67 FCC 2d at 1439.

[37] *See* Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986); Southern Bell Telephone and Telegraph Co. v. FCC, 781 F.2e 209 (D.C. Cir. 1986).

[38] Original cost used in rate base valuation means the cost of an asset when first devoted to the public service.

[39] The purchase of plant with traffic refers to the buying of another carrier's plant along with the right to provide service to the customers that are served by that plant. The purchase of plant without traffic refers to the buying of another carrier's plant without customers.

[40] For example, a carrier could demonstrate that the transfer of properties is part of a program of integration justified in the public interest for the purpose of achieving operating efficiencies that result in cost savings which offset any unavoidable excess in acquisition costs over original cost.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.3597 of
the Commission's Rules (Applications
for Voluntary Assignments or
Transfers of Control)

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1988; Released: February 10, 1989

By the Commission. Commissioner Quello dissenting and issuing a statement.

INTRODUCTION

1. The Commission has before it an Application for Review filed by The Office of Communication of the United Church of Christ, Action for Children's Television and the Legal Defense and Education Fund of the National Organization of Women (applicants). The application seeks review of an August 21, 1986 decision by the Acting Chief of the Mass Media Bureau, dismissing without prejudice applicants' Petition for Notice of Proposed Rule Making. The petition sought restoration of the Commission's "anti-trafficking" policy and its implementation of a five-year holding rule. The Bureau dismissed the petition on the ground that, for the most part, the petition restated the same arguments made and carefully considered by the Commission when it eliminated the "three year rule" in 1982.[1]

BACKGROUND

2. *The Initial Rule*. In 1962, the Commission adopted the "three year rule" which required an application for broadcast license assignment or transfer, submitted prior to completion of a three year holding period, to be designated for hearing unless specified extenuating circumstances were present or a waiver petition was found to be meritorious.[2] The Commission was concerned that the annual turnover of a large number of broadcast licenses might reflect "trafficking" in broadcast interests. Trafficking was defined as speculation, barter or trade in licenses to the detriment of the public interest.

3. *Elimination of the " Three Year Rule*. " Twenty years later, the Commission adopted a *Report and Order* eliminating the "three year rule" and amended its underlying "anti-trafficking policy." [3] In eliminating the "three year rule" the Commission took cognizance of the present maturity and success of the broadcasting industry and the multiplicity of media outlets. In the two decades since the rule had been enacted, the number of radio stations had multiplied from 3,712 to 9,125, and television stations had increased from 603 to 1,059.[4] In addition, broadcasters faced increasing competition from such newer technologies as cable television and video recordings, as well as developing direct satellite-to-home broadcasting.

4. The Commission found that in this current competitive environment, the public interest is usually best served by allowing station sales transactions to be regulated primarily by marketplace forces, subject of course to Commission approval in each case. The Commission noted that continuing the "three year rule" in effect might well cause deterioration of service by interfering with a broadcast property going to its higher valued use. The buyer who is willing and able to pay the market price for a given facility would be more likely to deliver the service audiences want than the owner unable or unwilling to continue station operation. However, the Commission found that the rule precluded the public from receiving such desired service. Additionally, the rule discouraged the purchase of a failing station because it tied the potential buyer to the facility for the three year period. Although a waiver of the rule was allowed, the time required to process it could deter investment in a failing facility. While a prospective buyer might be willing to take the risk of investing in a failing station on the assumption that it could turn the station around, if its efforts were unsuccessful, it would want the flexibility to sell quickly and cut its losses.

5. The Commission also stated that continued use of the trafficking rule in an effort to control station prices would be both ineffective and inappropriate. While the rule could theoretically have had the effect of reducing the value of broadcast stations, the Commission concluded that it was possible that the rule may have, in fact, increased station prices by artificially limiting the number of properties available for sale. More importantly, however, the Commission believed that station prices should not be a matter of Commission concern, as such prices will only reflect the true market value of the stations. The Commission does not directly regulate station sale prices, and it saw no need to attempt to do so indirectly by such artificial mechanisms as the "three year rule." The Commission further did not believe it necessary to retain the "three year rule" in order to regulate any advertising excesses. There is no logical connection between how long a station is held and the supply and demand factors affecting advertising in a local market. In any event, the Commission believed that market forces serve to minimize commercial excesses in broadcasting and assure that licensees are responsive to community needs as to informational programming without regard to the length of time they have held or intend to hold the station.

6. The Commission also concluded that the purchase and resale of broadcast properties in less than three years is not *per se* contrary to the public interest. Parties who engage in this activity may be "station doctors" who infuse new capital and/or ideas into a failing station, making it more responsive to its audience, and thereby serving the public interest. In addition, the Commission's experience had indicated that the rule had not been a boon to the entry into broadcasting of those of lesser means. Such involvement in ownership, the Commission noted, will best be achieved by its ongoing efforts to expand entry opportunities. Moreover, entry by women and minorities may in fact be deterred by an anti-trafficking rule, because such rules limit the opportunities to withdraw from the industry, thereby increasing lenders' risks and reducing the availability of capital.

7. *Reconsideration*. In 1985, acting on petitions for reconsideration of the *Report and Order*, the Commission issued a *Memorandum Opinion and Order* denying peti-

tioners' request for retention of the "three year rule."[5] Nevertheless, the Commission determined that transferees who obtain a station under the Minority Ownership Policy also should be subject to the one year holding period in order to protect the integrity of that policy. To avoid discouraging minority broadcasting, however, the one year holding period was made inapplicable to any transfer involving a minority transferee who obtained the station in a distress sale.

8. *1986 Petition for Rule Making.* On August 14, 1986, applicants filed a Petition for Notice of Proposed Rule Making to re-institute the "anti-trafficking policy." They suggest promulgation of a "five year rule" requiring that applications for assignment of broadcast facilities held less than five years be designated for hearing. Applicants allege that the Commission's 1982 action was a mistake in both a policy and legal sense. They submit that eliminating the "three year rule" was not necessary to rescue financially ailing stations and that permitting parties to buy broadcast stations with the view to reselling them at the highest obtainable profit as soon as practicable is not in the public interest. Also, applicants contend that "huge debt overhangs" resulting from high station prices present a serious public interest concern, and that eliminating the "three year rule" has led to great instability in the broadcast industry. They further assert that elimination of the holding period has caused community issue-oriented broadcasts and children's age-specific informational programming to suffer.

9. *Dismissal of Petition.* By letter dated August 21, 1986, the Acting Chief of the Mass Media Bureau dismissed the Petition for Notice of Proposed Rule Making pursuant to Section 1.401(e) of our Rules. The Bureau found that, for the most part, the petition restated the same arguments made and considered by the Commission when it eliminated the "three year rule," as well as when it reconsidered that decision in 1985. On September 4, 1986, applicants requested review of the Bureau's dismissal and incorporated by reference all the allegations made in their petition.

DISCUSSION

10. *Application for Review.* As noted above, there were no new assertions in the Petition for Notice of Proposed Rule Making. Therefore, the Bureau's action dismissing the Petition as repetitive is correct under Section 1.401(e) and is affirmed.[6] Given our procedural disposition of this matter, a substantive discussion of the issues is not required. However, to provide a fuller understanding of the subject, we will briefly discuss the issues raised.

11. *Sale of Financially Distressed Broadcast Stations.* Applicants allege that eliminating the "three year rule" was not necessary to help rescue financially ailing stations because licensees experiencing economic difficulties could seek a waiver of the holding period. The Commission never articulated rescue of financially ailing stations as a basis for elimination of the rule. Rather it noted, that the record developed confirmed that continuing the "three year rule" in effect may in fact cause deterioration of service by preventing a station from being transferred to a capable buyer. As an additional rationale for its action, the Commission cited the time required to process a waiver as having the potential to deter investment in financially troubled facilities. Moreover, as noted in the *Report and Order*, if the purchaser cannot cure the ailing station, it may provide caretaker service until a more permanent licensee is ready, willing or able to buy it in an unencumbered market. In broadcasting, like any other business, important services can be performed by people who trade in broadcast properties; for example, they can rehabilitate ailing stations with new capital and ideas or relieve unwilling licensees of the responsibility of running a station they no longer want. All these activities make broadcasting more responsive to viewers thereby promoting the public interest.

12. *Value of Broadcast Station.* Applicants assert that permitting parties to buy broadcast stations with the view to reselling them at the highest obtainable profit as soon as practicable is inconsistent with the public interest because such a purchaser has no long term commitment to either broadcasting or the community. We believe, however, that elimination of the "three year rule" has fostered rather than impeded the public interest. A primary incentive of any person purchasing a station no matter when he intends to resell is to increase the station's value. This is frequently accomplished by improving the station's services (including programming) and operations; the public thus benefits from the transaction. The Applicants have not shown that licensees holding a station for a short period of time are any less likely than others to provide good service.

13. *Women and Minorities.* The applicants have not shown that reimposing the "three year rule" would help women and minorities. First, by artificially reducing the number of broadcast properties available for sale, the three year holding period restricts opportunities for all potential purchasers, including women and minorities, to purchase broadcast facilities. Second, by artificially limiting the number of broadcast properties available for purchase at any one time, the rule, all other things being equal, may contribute to an increase in station prices making entry into broadcasting more difficult. While it might be thought that the "three year rule" would reduce station prices, the rule might actually increase those prices because it artificially limits the number of broadcast facilities available for sale. Third, trafficking rules, by also limiting the opportunities to withdraw from the industry, increase lenders' risk and therefore reduce the availability of capital, particularly to high risk borrowers, a category that may include women and minorities.

14. *The Debt Burden on Broadcasters.* Applicants assert that eliminating the "three year rule" has caused high station prices which in turn have resulted in "huge debt overhangs." They believe that this presents a serious public interest concern because the sums necessary for effective local public service will not be available to licensees. They have not however shown that the length of time a station is retained influences the amount of debt used to purchase or operate the station. The debt level a broadcaster incurs is determined by the value of his station, his demand for capital, and the cost of debt relative to equity. Moreover, there is substantial doubt that the broadcast industry has incurred "destructive" debt. Broadcasting as an industry is almost certainly less leveraged than cable television and may have a better ability to service debt than many other industries.[8] In any event, a relatively high debt level does not necessarily preclude an industry from flourishing and satisfying consumer needs. For instance, as mentioned, cable as an industry appears to have more indebtedness than broadcasting yet is unquestionably a thriving industry. We also note that a

holding period might actually increase the debt of a failing station by preventing broadcasters with losing operations from minimizing their losses by selling their stations freely.[9]

15. *Stability of the Broadcast Industry*. Applicants assert that eliminating the "three year rule" has led to great instability, that is, turnover in ownership, in the broadcast industry. Allegedly this has caused a reduction in public service programming. The applicants however, have not demonstrated that any alleged reduction in public service programming has resulted from repeal of the three year rule.

16. *Community Issue - Oriented and Children's Programming*. Applicants allege generally that community issue-oriented broadcasts and children's age-specific programming have suffered as a result of the elimination of the "three year rule." Applicants present no data or other evidence to support this allegation, however, and we know of no available data indicating that this has been the case. Further, broadcasters have every incentive as profit-oriented business entities to act efficiently irrespective of the length of time they hold a station. In this regard, they are guided primarily by the marketplace in determining what programming is aired. Moreover, there is no direct nexus between anti-trafficking rules and the nature of programming. Instituting anti-trafficking rules would be almost certainly an ineffective way of satisfying any perceived need for additional community responsive programming and children's broadcasts. The applicants have not shown that short term licensees are any less sensitive as a group to their public service obligations than licensees in general. In the absence of such evidence, the applicants have not met their burden of showing that the value of "stability" in principle outweighs the value of allowing new buyers to reinvigorate ailing or lackluster stations. If our rules and policies concerning program obligations are inadequate, we should address them directly instead of adopting the indirect remedy of an anti-trafficking rule.[10]

CONCLUSION

17. The Commission has reviewed applicants' allegations on numerous occasions in the past and found them to be without merit. In view of this conclusion and applicants' failure to offer any new substantive arguments or data regarding this matter, initiation of a rule making proceeding on the subject of trafficking is not warranted.

18. Accordingly, IT IS ORDERED, That, pursuant to 47 C.F.R. Section 1.115 (g), the Application for Review filed on September 4, 1986, by the Office of Communications of the United Church of Christ, Action for Children's Television and the NOW Legal Defense and Education Fund IS DENIED.

19. For further information concerning this *Memorandum Opinion and Order* contact Freda Lippert Thyden, Mass Media Bureau, (202) 632-6955.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *See Report and Order*, 51 RR 2d 1081 (1982).

[2] *Report and Order, Applications for Voluntary Assignments or Transfer of Control*, 32 FCC 689 (1962).

[3] 52 RR 2d 1081 (1982). In that decision, the Commission adopted a one year holding period, during which time a licensee who had obtained the permit as a result of a grant through the comparative hearing process could not transfer the license. The "one year" provision is not in issue in this current proceeding.

[4] As of October 31, 1988, the number of radio stations had reached 10,416, and the number of television stations had increased to 1,381.

[5] 99 FCC 2d 971 (1985).

[6] Section 1.401(e) states that "[p]etitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner." 47 C.F.R. § 1.401(e).

[7] *See Statement of L. Lowry Mays*, President of Clear Channel Communications, Inc., testifying before the U.S. House of Representatives Subcommittee on Telecomunications and Finance on H.R. 1187 on June 17, 1987. In his testimony, Mr. Mays indicated that capital for investment in broadcast properties is available today in amounts and from sources that would otherwise be deterred from considering broadcasting as a prudent investment when the "three year rule" was in existence.

[8] According to Harold Goldberg, senior vice president of Moody's Investors, compared to the business community as a whole, broadcasting currently faces fewer credit problems. "Debt burden not breaking the backs of broadcasters," *Broadcasting Magazine*, May 18, 1987.

[9] Although waiver of such a rule might be sought, as previously noted, the procedure might deter investment in financially troubled stations.

[10] *See Deregulation of Radio*, 104 FCC 2d 505 (1986); *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, 104 FCC 2d 357 (1986); and *Children's Television Programming and Advertising Practices*, 96 FCC 2d 634 (1984), *aff'd, Action for Children's Television v. FCC*, 756 F.2d 899 (D.C. Cir. 1985).

DISSENTING STATEMENT OF COMMISSIONER JAMES H. QUELLO

Re: Amendment of Section 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control)

I must dissent from the Commission's decision to affirm the Mass Media Bureau's dismissal of the Petition for a Notice of Proposed Rule Making. My views on reimposing the three year rule and antitrafficking policies are well known and need not be repeated here. *See Antitrafficking of Broadcast Station, 1987: Hearings on H.R. 1187 before the Subcomm. on Telecommunications and Finance of the House Committee on Energy and Commerce*, 100th Cong., 1st Sess. 23 1987 (Statement of James H. Quello, Commissioner, FCC).

In light of the new evidence presented at this Congressional hearing, I find it difficult to understand how the Commission could uphold the Bureau's dismissal pursu-

ant to Section 1.401(e) of our rules. The majority simply ignores the fact that there is additional relevant information concerning the ramifications of eliminating the antitrafficking rule. Much has happened in the marketplace since the Commission eliminated the rule in 1982. Contrary to the Bureau's conclusion, the petition is not repetitive. A new rule making proceeding would give the Commission an opportunity to consider new evidence on this issue. Accordingly, petitioner's Application for Review should be granted.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SOUTHWESTERN BELL TELEPHONE COMPANY Tariff F.C.C. No. 68 — Transmittal No. 1731

Switched Access Nonrecurring Charges

ORDER

Adopted: February 9, 1989; Released: February 10, 1989

By the Chief, Common Carrier Bureau:

1. Southwestern Bell Telephone Company (Southwestern) proposes in Transmittal No. 1731 to restructure the nonrecurring charges (NRCs) it applies to the local transport and feature group elements of switched access service. The nonrecurring charge elements would be applied on a first and additional line or trunk basis, per access order. Several optional features would also for the first time incur the initial application of nonrecurring charge elements, while others would incur no NRC element when requested at the time of installation. After the initial installation all optional features would incur NRCs when added or changed.

2. Petitions opposing the restructure were filed by MCI Telecommunications Corporation (MCI) and US Sprint Communications Company (US Sprint). US Sprint states that Southwestern's proposed increase in local transport recurring rates conflicts with assertions by Southwestern that the lower rate per line or trunk for nonrecurring charges is justified by economies of multiple installations and increased productivity. US Sprint also asserts that Southwestern's analysis fails to include revenue from the access order charge. US Sprint Petition at 2-3. US Sprint further contends that Southwestern has failed to make adjustments to its recurring charges to offset the proposed NRC changes. *Id.* at 4. Finally, US Sprint argues that Southwestern should not apply full nonrecurring charges to administrative changes that require no physical change. *Id.* at 5-6.

3. MCI states that Southwestern work time studies used to support local transport installation charges increase the work time associated with disconnection of service substantially from the figure posited by Southwestern's annual 1987 and 1988 access tariff filings. MCI Petition at 3-4. Similarly unexplained time allocations arise with respect to service installation, MCI contends. *Id.* at 5. As to the incremental nonrecurring charge elements proposed for specific optional features and functions, MCI contends these elements are not in fact optional. *Id.* at 6-8.

4. Southwestern replies, with respect to US Sprint's contentions, that it misconstrues Southwestern's revenue impact analysis, incorrectly compares data from past access filings, and ignores prior Commission rulings. Southwestern asserts that it recognizes the economies of multiple installations and productivity gains in developing its aggregate budget projections, so that no separate revenue requirement is developed for nonrecurring charges. Southwestern Reply at 3-5. As to US Sprint's contention that increased nonrecurring charges warrant compensating reductions in recurring charges, Southwestern iterates that its revised nonrecurring charges will, in aggregate, recover less revenue than the existing structure would realize, so that the recurring rate elements must recoup a correspondingly greater portion of the revenue requirement. With regard to the application of nonrecurring charge elements to changes of customers of record, Southwestern notes that the Commission has previously accepted this practice.

5. As to both petitioners' contention that work times for installation or disconnection of Local Transport are inflated, Southwestern responds that its recent cost study reflects a more thorough investigation into the job functions involved in installation and disconnection, and notes that some work times have diminished as a consequence. *Id.* at 7-9. With regard to MCI, Southwestern asserts that the work time data supporting its proposed nonrecurring charge for local transport installation is correct, and further that the characterization of specific features is not material to the recovery of costs from the cost causer.

6. The Common Carrier Bureau has reviewed Southwestern's Transmittal No. 1731 and the petitioners' assertions. We conclude that no compelling argument has been presented that Southwestern's proposed tariff is patently unlawful as to warrant rejection, and that an investigation of the proposal is not warranted at this time.

7. Accordingly, IT IS ORDERED that the petitions to reject or to suspend and investigate Southwestern Bell Telephone Company Transmittal No. 1731, filed by MCI Telecommunications Corporation and US Sprint Communications Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-350

In the Matter of

Amendment of Part 73 of the
Commission's Rules Concerning
Equal Employment Opportunity
in the Broadcast Radio and
Television Services

MEMORANDUM OPINION AND ORDER

Adopted: February 8, 1989; Released: February 22, 1989

By the Commission:

1. The Commission has before it a "Request For Clarification And For Suspension Of Effective Date" filed June 8, 1988 by the National Association of Broadcasters (NAB). NAB asks that we clarify the procedures broadcasters are to follow in compiling data for and completing Section III of the new FCC Form 396.[1] The new Form 396, like its predecessor, seeks information concerning a broadcast station's EEO efforts and is filed with a station's license renewal application.[2] NAB also asks that we suspend or modify our use of Section III for at least one year to allow broadcasters time to come into compliance with its requirements. [3]

2. NAB notes that Section III of the form released for use with applications for license renewal that were due to be filed on or after June 1, 1988, differs from the version that appeared with the *Report and Order*. It asserts that the new version asks licensees to report separately the number of minority and women referrals, while the version released with the *Report and Order*, as well as the former FCC Form 396, merely asked for the number of referrals. NAB states that it does not, in principle, oppose the collection of separate referral data for minorities and women. However, it does object to the manner in which this requirement was introduced and the lack of a phase-in period to permit licensees to come into compliance with the new manner of reporting referral data.[4] NAB also states that it is unclear how we expect the data to be collected and the type of data we expect to receive.

3. NAB contends that the new method of reporting referral data will cause confusion for broadcasters. It claims that to comply with nondiscrimination laws, broadcasters have been regularly advised by their attorneys not to request or maintain information on employment applications regarding the race or sex of applicants. NAB asserts that we are now mandating that broadcasters report such data without explaining how we expect those data to be collected without violating federal or state antidiscrimination laws. To resolve this dilemma, it requests that, at the least, we describe the procedures licensees should use so that licensees may cite our instructions as a defense to a discrimination case which attacks the licensee for obtaining and maintaining these data.

4. NAB also asks that we define the term "referral" so that licensees know who to include in the Section III data report. NAB claims that, historically, licensees counted as referrals persons who submitted resumes received as a result of help wanted advertisements or those who made telephone inquiries about possible job openings. To obtain information about such a person's race or sex, a licensee would have to send a data request form and have it returned. Alternatively, a licensee could count only those who actually came to the station or those who were interviewed.

5. *DISCUSSION*. Our broadcast EEO rules require that broadcast licensees refrain from employment discrimination and establish and maintain an affirmative action program for qualified minorities and women.[5] These basic obligations have existed since 1970.[6] In explaining the scope of a licensee's affirmative action duties, we have repeatedly emphasized the importance of recruiting qualified minorities and women.[7] Recruitment efforts became more important when, in June 1987, the Commission adopted an efforts-oriented EEO program. The Commission believed that the principal element of a good EEO program was the effort undertaken to attract qualified minority and female applicants whenever vacancies occurred, rather than relying on a station's statistical profile. Also, our rules have always stressed that periodic self-assessment is a necessary part of a functioning affirmative action program.[8] In essence, self-assessment involves licensee review of its entire personnel process, *i.e.*, from recruitment to termination, to ensure that minorities and women are afforded equal opportunities in employment.

6. In 1976, we adopted a model EEO program to assist licensees' compliance with our EEO rules. Section IV of that program, entitled recruitment, asked for a reporting of recruitment procedures for minorities and women in order to ensure nondiscrimination. Section IV asked licensees to list the number of referrals received from minority and women's organizations, employment services, educational institutions with significant minority and female enrollments, and advertisements in printed media which have significant circulation among minorities and women. The rationale for collecting and reporting referral data was to determine the success of the licensee's efforts to increase the pool of minority and female applicants.[9] Also, the 1976 EEO program form asked licensees whether an analysis of their recruitment techniques, job applications, and new hires suggested that a sufficient number of qualified minorities and women were applying for available positions. Thus, in order to answer this question, even as far back as 1976, licensees would have had to collect data about the race and sex of minority and female referrals.[10]

7. We also note that, when questions have arisen about a licensee's recruitment efforts, the Commission has asked for and received information about applicant flow.[11] Specifically, we have asked licensees for a list of those hired as well as those who applied for each job filled during a particular period of time, identifying each applicant by referral source, sex, and race or national origin. When applicant flow data were not kept by a licensee or when a licensee could not determine whether its efforts resulted in any minority or female referrals, we held the program deficient.[12] Moreover, when we have found efforts to be

deficient, the reporting conditions imposed have usually required licensees to submit information about the race, sex and referral source of applicants.[13]

8. Therefore, we disagree with NAB that the new manner of reporting referral information constitutes a significant departure from past practice. We also disagree that the reporting change from undifferentiated data to data for only minority and female referrals means that we cannot sanction a licensee for failing to have the information. We recognize that, absent notice, Section 552(a)(1) of the Administrative Procedure Act (APA) requires that each amendment of the "description of forms available," "instructions," and "substantive rules of general applicability" be published in the Federal Register before any person may be adversely affected by a matter which should have been published but was not published.[14] However, the data we are asking licensees to report should have been kept by licensees at least since 1976 to fulfill their reporting obligations as to recruitment as well as their self-assessment obligations. Having licensees report the source and number of minority and female referrals does not constitute a new requirement. The reporting of these data merely allows us to more accurately assess a licensee's EEO efforts and verify that the means for self-assessment actually exist as reflected in the EEO reported data.

9. We also dispute the suggestion that collecting information about the race and sex of applicants will subject licensees to liability under the civil rights laws. The Equal Employment Opportunity Commission has long recognized that information as to an applicant's race and sex can be collected pursuant to an affirmative action plan.[15] Further, although some states appear to prohibit the collection of information about an applicant's race or national origin, our research indicates that those same states recognize that such information may be lawfully collected if the collection is pursuant to the requirements of a federal agency or in furtherance of a program to analyze whether recruitment or selection procedures have an adverse impact upon protected classes.[16] The data collection we have mandated is for the purpose of allowing licensees to analyze whether their recruitment efforts are resulting in applicant pools which include qualified minority and female applicants. This purpose was articulated in 1976 and has remained unchanged. We, therefore, conclude that the model EEO program's required method of reporting data will not subject licensees to liability under state or federal antidiscrimination laws.[17]

10. With respect to the term "referral," we note that it appears in Section III of the new Form 396, which references recruitment efforts made to attract qualified minority and female applicants. Similarly, Section IV of the former Form 396 also referenced recruitment of qualified minority and female applicants. NAB states that licensees have included as referrals all who submit resumes or make telephone inquiries about job openings. Thus, no distinction would be made on the reporting form between women, males or minorities. As to this point, NAB seems to suggest that this type of non-specific reporting was all that was required by a licensee for EEO compliance purposes in the past. However, such an interpretation is obviously contrary to the stated intent, past and present, of our EEO rules, *i.e.*, to ascertain the steps taken by licensees to recruit women and minorities (*see* paragraph 6, *supra*). Moreover, we do not see how a licensee, or the Commission, could possibly assess, as required, whether a sufficient number of qualified women and minorities were applying for available positions, if the licensee had no idea as to how many, if any, women and minorities were applying for such positions.

11. In order to complete the referral section accurately, a licensee needs to know whether the referral is a minority or a female. If that fact is not known because, for example, no follow-up was made on applications received by mail, the referral cannot be reported as a minority or female referral. We are aware of several methods that can be used to obtain information about an applicant's race and sex.[18]

12. Moreover, with respect to "qualified" applicants, that is, those applicants who are actively considered for a particular position, licensees are in a position to observe and record the person's sex and race or national origin when the person is either interviewed or fills out an application at the station's personnel office.[19] For those applicants interviewed by telephone, the sex of the person may be evident. Similarly, the sex of an applicant may be ascertained from an audio tape and the sex and race from a video tape. Thus, there should be no additional recordkeeping burden on licensees; the only difference is that the data collected will be reported separately for minorities and women, not together.[20]

13. As far as reporting on the new Form 396 is concerned, those few licensees that may have misinterpreted our requirements or that have not been collecting and maintaining referral data by race and sex because of a belief that their collection and maintenance were unlawful or not required should be able to reconstruct those data by checking with their employees who interviewed prospective job candidates. We believe most licensees can provide this information.[21] If a licensee cannot determine the race and sex of the persons it has interviewed, a question may be raised whether the licensee had sufficient information to analyze the effectiveness of its recruitment efforts, critical information for renewal purposes.[22] On a case-by-case basis we will afford those licensees, who do not report the data as requested, an opportunity to reconstruct such data, by further checking as noted above. We will continue this case-by-case approach for one year following the release date of this order.

14. Accordingly, IT IS ORDERED, That the "Request for Clarification and for Suspension of Effective Date" filed by the National Association of Broadcasters IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] In the *Report and Order* in this proceeding, the Commission adopted revisions to its Equal Employment Opportunity (EEO) rules. To focus additional attention on licensees' EEO efforts, the Commission replaced the then existing 10-point EEO Program Report with a new Broadcast Equal Opportunity Program Report (FCC Form 396). *Report and Order* in MM Docket No. 85-350, 2 FCC Rcd 3967 (1987).

[2] A copy of the new FCC Form 396 is attached as Appendix A.

[3] Comments in support of NAB's petition were filed by the Broadcast Financial Management Association (BFM) and the law firms of Haley, Bader & Potts, and Levanthal, Senter & Lerman. Opposing comments were filed by the Citizens Communications Center, Institute for Public Representation, which filed on behalf of seven public interest organizations that had participated in this Rule Making. For a complete list of the commenters, see Appendix B.

[4] Citing Section 552(a)(1)(C) of the Administrative Procedure Act, BFM claims that the Commission cannot sanction a licensee for having failed to compile data on referrals based on sex and race because licensees could not have known that such data were needed. The Citizens Communications Center argues that the new format does not add any new requirements and merely requires more precise reporting about an activity, *i.e.*, recruiting, which has always been a critical part of a licensee's EEO program.

[5] Section 73.2080 of the Commission's Rules.

[6] *Nondiscrimination Employment Practices of Broadcast Licensees*, 23 FCC 2d 430 (1970).

[7] *See, e.g., Pyle Communications of Beaumont, Inc.*, 2 FCC Rcd 1793, 1795-96 (1987); *KDEN Broadcasting Co.*, 55 RR 2d 1311 (1984); *Leflore Broadcasting Co.*, 65 FCC 2d 556 (1977); *Employment Policies and Practices*, 44 FCC 2d 1049 (1973).

[8] *See, e.g., Carolina Christian Broadcasting, Inc.*, 3 FCC Rcd 1907, 1810 (1988); *Leflore Broadcasting Co.*, supra note 7 at 563.

[9] *Nondiscrimination in Employment Practices (Broadcast)*, 60 FCC 2d 226, 236 (1976).

[10] Keeping track of applicants by race and sex is not new to members of NAB. In 1980, NAB published *A Broadcasters Guide to Designing an Effective EEO Program*, which included instructions on how licensees should collect and maintain applicant flow data by race and sex. The book also recommends that only those individuals who actually fill out an application for employment be treated as job applicants. We find it ironic that NAB should now contend that licensees were not collecting this information and did not know how to do so.

[11] *E.g., Richey Airwaves, Inc.*, 53 RR 2d 330 (1983).

[12] *National Capital Christian Broadcasting, Inc.*, 3 FCC Rcd 1919, 1920 (1988);

[13] *E.g., Baltimore Metropolitan Broadcast Stations*, 89 FCC 2d 1183, 1196 (1982).

[14] *See also*, Section 553 of the APA, 5 U.S.C. Sec. 553.

[15] *See* EEOC Decision No. 75-S-068 (November 14, 1974). Moreover, in Sec. 1607.4 of the Uniform Guidelines on Employee Selection Procedures (1978), the EEOC states that:

> A. Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group . . . to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of applicant population and adequate in size.
>
> B. . . . The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO-1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly.

[16] The law firm of Leventhal, Senter & Lerman contend that numerous states have enacted laws which prohibit employers from making the inquiries that are mandated by Form 396's recruitment section. As examples, the laws of Maine, Michigan, Ohio and West Virginia are cited, and provisions of the Ohio law are quoted. However, our research has disclosed that each of the referenced states, by policy or rule, allows for the collection of data by race and sex under certain circumstances. For example, the Ohio Civil Rights Commission has adopted a policy guideline which states:

> . . . Sec. 2. The Commission will not consider the making and maintenance of records of the race, religion or national origin of applicants for employment . . . to violate the purpose of R.C. Sec.4112.02(E) and 4112.02 (H)(7) where such records are: (a) Made in conformance with instructions from, or the requirements of, an agency . . . of the . . . federal government in connection with the administration of a program which serves to promote the elimination of discrimination; . . .
>
> Sec. 3. The Commission will not consider the making and maintenance of records of the race, religion, or national origin of applicants for employment . . . to violate R.C. Sec.4112.02(E)(1) and (2) and 4112.02(H)(7) where: (a) Such recordkeeping is part of a bona fide systematic program to analyze whether recruitment, selection or other employment procedures have an adverse effect upon the classes protected . . . .

Vol. 3, Employment Practices Guide, para. 26,655, pp. 9343-44 (1981).

The exceptions to the statutory prohibition for collecting data about the race and sex of job applicants are also repeated in Section 4112-5-04 of the rules of the Ohio Civil Rights Commission.

The Pre-employment Inquiry Guide issued by the West Virginia Human Rights Commission states:

> "An employer may keep information that lists the race, sex and age of an individual if that information is maintained in a segregated filing system and is used only for legitimate reporting purposes and/or to monitor the progress of an employer's Affirmative Action Program and not for any harmful discriminatory practice. It is advisable that questions pertaining to Race, Sex or Age appear on a separate sheet of the application form; or on a detachable section of the form."

See also, Sections 3.06B, 3.09B and 3.11B of the employment regulations of the Maine Human Rights Commission; and the Pre-Employment Inquiry Guide issued by the Michigan Department of Civil Rights and Section 37.24 of the regulations of the Michigan Civil Rights Commission.

[17] We also note that no licensee has ever reported that its collection of applicant data was sanctioned by the EEOC or the appropriate state human relations agency. However, if any state's law or policy does bar collection of the data we have directed licensees to obtain for their affirmative action programs, we will take that into account in evaluating the licensee's overall efforts.

[18] *See supra* note 16's reference to the Pre-Employment Inquiry Guide issued by the West Virginia Human Rights Commission.

[19] The licensee has full discretion to determine which applicants are actively considered and therefore which applicants are deemed to be "qualified."

[20] Referrals who are female minorities may and should be counted as both a female and a minority.

[21] Nearly 90% of the first group to use the new Form 396 reported referral data in the manner requested.

[22] When a licensee is unable to provide any referral data and the station's renewal application EEO program suggests that there were insufficient EEO efforts, we delegate to the Chief, Mass Media Bureau, the authority to impose a reporting condition for one year to monitor the licensee's implementation of an appropriate system of record keeping. To effect this change in authority, we will amend Section 0.283 of our rules. *See* Appendix C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-33

In the Matter of

Amendment of Section 73.202(b), RM-6542
Table of Allotments,
FM Broadcast Stations.
(Petersburg, New Jersey)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 1989; Released: February 22, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by General Electronics Development Corporation (petitioner), requesting the allotment of Channel 274A to Petersburg, New Jersey, as a first local FM service.

2. Petitioner states that Petersburg, a recognized historic town in New Jersey and Cape May history, is an unincorporated place in Upper Township, Cape May County, New Jersey. It states that the 1986 Rand McNally lists Petersburg with a population of 1,986 persons and the 1980 census shows Upper Township with a population of 6,713 persons. Additionally, it submits that area realtors and the Cape May County Multiple Listing Service recognize Petersburg as a community for identifying locations of real estate for sale. According to petitioner, Petersburg received its mail through a local post office until it was recently consolidated with the Tuckahoe and Woodbine, New Jersey, post offices. According to petitioner, Petersburg is primarily a residential area. However, it submits that it is the home of the Upper Township Rescue Squad, the Upper Cape Branch of the Cape May County Library, the United Wesley Methodist Church and the Petersburg Recreation Center Athletic Field, one of the major Upper Township facilities, the Upper Township Middle School and Upper Township Board of Education, several private businesses, including a gas station, beauty salon and one of the major sod farms of South Jersey.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission fairly, equitably and efficiently distribute frequencies " . . . among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. However, Petersburg is not listed in the U.S. Census or incorporated.[1] Although petitioner demonstrates that local realtors use a Petersburg designation in identifying real estate locations, it provides no information as to any social, economic, governmental or cultural organizations which identify themselves with Petersburg. On the contrary, the information which petitioner has supplied leads us to believe that Petersburg may be only an area within the community of Upper Township where some of the community's services and businesses are physically located. Therefore, petitioner is requested to present additional information demonstrating that Petersburg has social, economic, governmental or cultural indicia to qualify it as a "community" for allotment purposes. In addition, petitioner failed to state its intention to apply for Channel 274A, if allotted to Petersburg. It is therefore requested to do so in comments.

4. Channel 274A can be allotted to Petersburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) southeast to avoid a short-spacing to Station WMGK, Channel 275B, Philadelphia, Pennsylvania.[2]

5. In view of the above discussion, we believe it is appropriate to to seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Petersburg, New Jersey, as follows:

	Channel No.	
City	Present	Proposed
Petersburg, New Jersey	--	274A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William L. Bruce, III, Esq.
Stanford & Bruce
34 East Main Street
Mays Landing, New Jersey 08330-1798
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte*

presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Warren Grove is not listed in the 1988 Rand McNally Road Atlas but is listed in the 1988 Rand McNally Commercial Atlas and attributed with a population of 750 persons. However, mere geographical location is not sufficient to establish "community" status. *See, Vimville, Mississippi*, 48 FR 5974 (1983).

[2] The coordinates for this allotment are North Latitude 39-11-58 and West Longitude 74-40-34.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-34

In the Matter of

Amendment of Section 73.202(b), RM-6552
Table of Allotments,
FM Broadcast Stations.
(Belen and Grants, New Mexico)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 1989; Released: February 22, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Brooks Broadcasting Company, Inc. (petitioner), requesting the substitution of Channel 249C for Channel 249A at Belen, New Mexico, and the modification of its license for Station KARS-FM to specify operation on the higher powered channel. In order to allot Channel 249C to Belen in compliance with the Commission's minimum distance separation requirements, petitioner also requests the substitution of Channel 265C2 for Channel 250C2 at Grants, New Mexico, which is unoccupied but applied for.[1]

2. Channel 249C can be allotted to Belen in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station KARS-FM. Channel 265C2 can be allotted to Grants in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in the pending application of Don R. Davis (Davis).[2] As requested, we shall also propose to modify petitioner's license for Station KARS-FM to specify operation on Channel 249C. In accordance with Section 1.420(g) of the Commission's Rules, petitioner's license for Station KARS-FM may be modified without giving consideration to competing expressions of interest in use of Channel 249C at Belen or requiring the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties. If the Commission should ultimately adopt the proposal herein, Davis would be permitted to amend his application to specify operation on Channel 265C2 without loss of cut-off protection since the channels are equivalent.

3. We believe the public interest would be served by proposing the channel substitutions discussed above since it could permit Station KARS-FM to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Belens, New Mexico	249A	249C
Grants, New Mexico	237A, 250C2, 279C, 288C	237A, 265C2, 279C, 288C

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lee J. Peltzman, Esq.
Baraff, Koerner, Olender & Hochberg, P.C.
2033 M Street, N.W., Suite 700
Washington, D.C. 20036-3355
(Counsel to petitioner)

6. IT IS ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making* to the applicant for Channel 250C2 at Grants, New Mexico, as follows: Don R. Davis, 3611 Altamonte Avenue NE, Albuquerque, New Mexico 87110.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] An application for Channel 250C2 at Grants has been filed under the Commission's first-come-first-serve rules by Don R. Davis (ARN-880616NF). Davis has submitted a letter in conjunction with the petition for rule making stating his agreement to the change in frequency.

[2] The coordinates for Channel 249C at Belen are North Latitude 34-45-02 and West Longitude 106-39-55. The coordinates for Channel 265C2 at Grants are North Latitude 35-07-09 and West Longitude 107-54-08.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-7

In the Matter of

Amendment of Section 73.3555
of the Commission's Rules, the
Broadcast Multiple Ownership Rules

FIRST REPORT AND ORDER

Adopted: October 27, 1988; Released: February 22, 1989

By the Commission:

I. INTRODUCTION

1. By this action, the Commission modifies one of its local multiple ownership rules -- the radio "duopoly" rule prohibiting common ownership of two or more commercial radio stations in the same broadcast service whose 1 mV/m contours overlap.[1] We are relaxing this rule to a "principal city" contour standard (the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations).[2] This refinement of the contour overlap standard represents a relatively minor adjustment to the rule, under which ownership of two AM or FM stations located in the same principal city will still be prohibited. Nonetheless, this action will enable broadcasters to own two or more commercial radio stations in the same service in closer proximity than is currently allowed, enabling them to realize some of the efficiencies of common ownership.

2. Our decision to relax the radio duopoly rule is based on our experience in implementing the local ownership rules, our recognition of the geographic area in which most listenership occurs, the undue discrimination against AM broadcasters caused by the present rule, the substantial growth in the number of media outlets in markets of all sizes since the rule was adopted, and the data submitted by commenters concerning the benefits of ownership of more than one station in the same geographic area. We conclude that the public interest would be best served by redefining the signal contours applicable to the radio duopoly rule so as to prohibit overlap of the principal city contours, the areas where the majority of a station's listeners are located. We believe that this approach best serves the public interest by fostering our continuing goals of promoting economic competition and diversification of programming and viewpoints while not unnecessarily restricting broadcasters' discretion and by enabling broadcasters and the public to take greater advantage of the benefits of common ownership of broadcast stations in the same geographic area.

3. On February 20, 1987, we released a *Notice of Proposed Rule Making* in this proceeding (*Notice*),[3] which set forth several rather narrow proposals for relaxing two local ownership rules. First, the *Notice* proposed to liberalize the radio duopoly rule to allow a greater degree of overlap between station contours. Second, the *Notice* proposed relaxing the "one-to-a-market" or radio-television cross-ownership rule to allow the common ownership of certain radio-television combinations.

4. In response to the *Notice*, over fifty parties filed comments and reply comments in this proceeding. These submissions, which are summarized, to the extent they relate to the radio duopoly rule, in Part III below, provide strong support for modification of our radio duopoly rule.[4] In fact, a few commenters supported complete elimination of this rule, despite the fact that such an approach is beyond the scope of the options set forth in the *Notice*. After carefully reviewing these comments, we find that the record supports our initial conclusion that the current radio duopoly rule should be relaxed to a principal city contour standard as proposed in the *Notice*. We will address the radio-television cross-ownership rule in a subsequent decision.

II. BACKGROUND

5. The radio duopoly rule is the oldest of the Commission's multiple ownership rules and originated in the Commission's chain broadcast rulings. Initially, the rule prohibited the licensing of two AM stations in the same area to a single network.[5] Subsequently, the Commission adopted generic duopoly rules which contained general language prohibiting the common ownership of two or more stations in the same broadcast service which serve substantially the same area.[6] These early versions of the duopoly rule were intended to promote the dual goals of economic competition and diversity of program and service viewpoints by encouraging diversity in the ownership of stations. The form of these rules resulted in a case-by-case approach to duopoly questions under which a variety of factors were considered, such as the classes of the stations involved, the extent of overlap between the service contours of the stations, the area and populations within the overlap, interference limitations on the signals of the stations, and the extent of competition with other broadcast stations.

6. This general language in the duopoly rule was subsequently eliminated in 1964 and the present fixed 1 mV/m contour overlap standard was substituted.[7] As we stated in the *Notice*, this fixed rule was adopted because the Commission believed that the case-by-case method had proven cumbersome and did not always justify the effort expended.[8] Many commenters in this proceeding argued that the current fixed 1 mV/m contour standard is overly restrictive, however, and does not accurately reflect the area where most radio listening occurs. In addition, we acknowledged in our *Notice* that this standard discriminates against AM broadcasters because "the 1 mV/m signal of an AM station is not equivalent to the 1 mV/m signal of an FM station."[9] Consequently, we have adopted a principal city contour standard to remedy these defects of the current rule, as will be discussed in Part IV below.

7. *Diversity and Competition Goals.* As we stated in the *Notice*, the ultimate objectives of the duopoly rule, like our other multiple ownership rules, have been to promote economic competition and diversity of programming and viewpoints in order to further the public interest. With respect to our diversity goal, we have stated in the past that "the rules are based upon a view of the First Amendment to the Constitution similar to that of the Supreme Court in the *Associated Press* case -- *i.e.*, a

notion that the First Amendment 'rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'"[10] Although one of the structural purposes underlying our multiple ownership rules is to encourage diversity in the ownership of broadcast stations, we have encouraged ownership diversity as a *means* of promoting diversity of program sources and viewpoints, not as an end in itself.

8. Besides promoting diversity of programming and viewpoints, the local ownership rules also seek "to prevent undue concentration of economic power contrary to the public interest."[11] Our economic concerns have been aimed at precluding broadcasters from "dominat[ing] television and radio markets and wield[ing] power to the detriment of small owners, advertisers, and the public interest."[12] Our concerns in this area have not been based upon any evidence that group ownership would necessarily lead to anticompetitive practices in local markets, however, but upon the *potential* for such practices to occur.[13] Indeed, we have found that "[o]n an overall basis, there has been no showing that single stations cannot compete effectively with combination owners."[14] Nevertheless, we concluded that it was not necessary to find specific evidence of anticompetitive abuses in order to adopt local ownership restrictions and that, on balance, at that time, the public interest would be served by adopting the duopoly rule.

III. SUMMARY OF THE RECORD

9. As stated above, the numerous commenters in this proceeding provided nearly unanimous support for the Commission's tentative view that the present rule is overly restrictive and that the benefits of allowing common ownership in closer proximity outweigh the need for the present rule because of the substantial changes that have occurred in the marketplace. Specifically, more than half of the commenters supported the Commission's proposal to relax the rule to prohibit the common ownership of two or more AM stations whose 5 mV/m groundwave (or principal city) contours overlap or two or more FM stations whose 3.16 mV/m (or principal city) contours overlap. Several parties supported the Commission's proposal insofar as it applies to AM stations, but did not support revising the duopoly rule as it applies to FM stations. Commenters opposed to relaxation of the rules generally asserted that these "structural" regulations are still needed to promote diversity of viewpoint, and that efficiency considerations do not support easing the restrictions.

10. *Negative Effects of the Current Rule*. A large group of commenters, many of whom cited the findings of the *AM Status Report*, asserted that the present restrictions are overbroad in effect because they ignore, *inter alia*, variations in service areas, the extent of competition by other media in the area of overlapping contours, the classes of stations involved, the nature of terrain at issue, the population and economic conditions of the overlap areas, and the audience ratings of the relevant stations with overlapping contours. In particular, commenters asserted that AM and FM signals that reach beyond the principal city contour have little competitive impact in neighboring markets. For example, NBC noted that an analysis of its AM and FM listening audiences shows that at least 72.4 percent of its audience in any market is located within the AM station's principal city contour and at least 63.8 percent of the audience is located within the FM station's principal city contour.

11. Group W and other commenters also concurred in the Commission's observation that use of the present 1 mV/m contour discriminates against AM stations because the 1 mV/m signal of an AM station is not equivalent in quality to the 1 mV/m signal of an FM station. Commenters agreed that use of the city-grade signal level (*i.e.*, principal city contours) would be more equitable, because it represents the minimum signal strength that AM and FM stations are required to place over their respective communities of license.

12. *Marketplace Developments*. Commenters generally agreed with the Commission's tentative view that changes in the marketplace have lessened the need for the present restrictions. In this regard, commenters cited the substantial increase in the number of broadcast stations, the emergence and growth of new services and technologies, and the abundance of competition in local markets. Many commenters provided statistics on the number of media outlets available in selected television and radio markets,[15] while others compiled data on the number of media outlets in more broad-based categories of markets such as the top twenty, fifty, and seventy-five television markets.[16]

13. The most extensive of these studies, conducted by NAB in early 1987, examined the number of media outlets in all 209 television markets, using A.C. Nielsen's Designated Market Areas (DMA's) as the relevant markets.[17] The study revealed that the average market encompasses 10 over-the-air television signals, 20.4 commercial AM stations, 19.5 commercial FM stations, 36 programmed cable channels in use with a 48.8% penetration rate, 15.9 newspapers, 11.8 significantly read magazines, and a VCR penetration rate of 48.7.[18] In addition, the study showed that even the smallest markets have have about nine or ten radio and television outlets[19] and have access, on the average, to over 20 cable channels.

14. NAB contended that this "[g]rowth in the number of media outlets in local markets has lessened the need to be concerned about undue media concentration from the common ownership of two AM stations in the same market." To support its contention, NAB examined the level of concentration in radio markets under the Department of Justice's *Merger Guidelines*.[20] Of the 259 markets studied, 47.9% were "unconcentrated," 38.6% were "moderately concentrated" and only 13.5% were "highly concentrated." Furthermore, NAB found that in a number of the "moderately concentrated" markets, the combination of any two AM stations would not increase concentration enough to warrant antitrust action. NAB also noted that, "as a practical matter, an increase in concentration resulting from the co-ownership of two AM stations in the same area would be tempered by the existence of other broadcast, and non-broadcast, media outlets which were not considered in this concentration study." The FTC staff agreed that the NAB's concentration calculations "are likely to overstate the potential for antitrust problems" because the calculations presume that radio services alone constitute a relevant economic market (without taking into account other media substitutes for radio services) and they fail to account for new station entry that could be authorized by the Commission.

15. Similarly, the Washington Legal Foundation and other commenters asserted that because of this tremendous growth and multitude of "voices," the ownership

restrictions are no longer needed to ensure diversity of viewpoint and economic competition, and that elimination of the restrictions may actually enhance those dual goals by allowing cost savings in the joint operation of stations, which could lead to better programming service to the public and enhanced viability of stations. Those commenters supporting the adoption of the Commission's proposed rule generally believed that the principal city contour standard reflects a reasonable "rebalancing" of the factors underlying the present restrictions. In further support of substantially relaxing or eliminating the rule, commenters also cited the "safety net" provided by the antitrust laws.

16. *Benefits of Common Ownership*. Commenters also agreed with the Commission that significant cost savings can be realized through the economies of scale made possible by common ownership. The FTC staff asserted that its statistical study of the efficiencies associated with joint ownership of AM-FM combinations suggests that there also may be efficiencies associated with the joint ownership of multiple AM or multiple FM stations in the same area. Commenters asserted that these cost savings may translate into new or expanded broadcast service. NAB and other commenters also noted that cost savings would benefit the public interest significantly by aiding the development of more diverse program service.

17. To corroborate this theory, CBS submitted an analysis of the extent to which program duplication occurs between commonly owned AM and FM stations in the top 20 markets.[21] Specifically, CBS determined that there are 149 co-owned AM and FM radio stations in these markets, and that 131 of these combinations air entirely separate programming. Of the remaining 18 combinations, ten duplicate programming 100% of the time, and the remaining eight combinations duplicate programming for periods of time ranging from 25% to 75% of the time. CBS found that, overall, commonly owned AM and FM stations in the top twenty markets air separate programming 91% of the time.

18. *Proposals*. Commenters supporting the modification of the duopoly rule advanced several different proposals, ranging from adopting the principal city overlap standard only for AM stations but retaining the present 1 mV/m overlap standard for FM stations to eliminating the rule as it applies to both AM and FM stations. In between, many commenters supported the Commission's proposal to adopt the principal city contour overlap standard for both AM and FM stations, and other parties argued that the Commission should adopt the principal city overlap standard for FM stations and adopt an overlap standard for AM stations which provides even greater relief for these stations from the ownership restrictions.[22]

19. Several commenters advocated stronger relief for AM stations vis-a-vis FM stations. NAB, echoing the concerns of these commenters, contended that the present overlap standard "has helped to handicap the competitive ability of AM broadcasters." NAB asked the Commission to adopt the 5 mV/m overlap standard for AM, but to retain the 1 mV/m standard for FM. NAB "recognizes that there may come a time when relaxation of the duopoly rule similarly may benefit FM radio," but it believes the present standard "does not adversely impact on FM service" at this time. Clear Channel Communications, Inc. argued that, "[g]iven the current economic condition of AM radio, AM licensees should be given increased flexibility to respond more effectively to economic forces and conditions within the radio industry." Other commenters contended that relaxation of the duopoly restrictions should be confined only to AM stations in order to enhance the competitive status of the AM radio service. Shamrock Broadcasting, Inc. argued that relaxing the duopoly rule as it applies to FM stations "may adversely impact upon whatever curative effects are realized by such relaxation for AM." These positions were sharply criticized by several FM station licensees in reply comments.

20. *Comments Opposed to Relaxation*. The commenters opposed to relaxation of the local ownership rules argued that the FCC has neither justification nor authority to adopt its proposed action because: (1) the Commission recently relied on the local ownership rules in eliminating the regional concentration rules and relaxing the national ownership restrictions; (2) Congress supports the FCC's diversification policy, as reflected in the cross-ownership and diversity provisions, respectively, of the 1984 Cable Act and the lottery statute; and (3) the claimed benefits of relaxation do not outweigh the diversity concerns addressed by the rules. These commenters also asserted that the Commission's proposals are not supported by the efficiency considerations because: (1) cost savings either are insignificant or speculative; (2) the Commission originally adopted the local ownership rules despite similar arguments regarding the benefits of common ownership; and (3) there is no basis for stating that cost savings will lead to improved or more diverse programming.[23] In addition, commenters argued that relaxation of the rules would increase demand, and correspondingly the price, for stations, and thereby impede the goal of minority ownership.

IV. DISCUSSION

21. As we stated in the *Notice*, twenty-four years have elapsed since the fixed duopoly rule was adopted. Based on the record in this proceeding and the overwhelming support of the comments received, we conclude that the public interest is best served at this time by relaxing the rule as proposed in the *Notice*. The principal city contour standard that we are adopting more accurately reflects the geographic area where most of a station's audience is located and relieves the overly restrictive effects of the current rule, including the unwarranted discrimination against AM broadcasters. Under this relatively minor adjustment to the rule, we will still prohibit the common ownership of stations in the same service located in substantially the same listening area. In light of this fact, as well as the substantial growth and availability of media outlets in local markets, we find that this modification will not adversely affect our traditional competition and diversity goals, and will result in other, often related, public interest goals.

A. REASONS FOR MODIFYING THE RULE

22. Our decision to relax the fixed 1 mV/m contour standard of the radio duopoly rule is based on several key findings. This section discusses these findings in greater detail, including the negative effects of the current rule, the changed circumstances affecting our traditional diversity and competition concerns, and the potential benefits of permitting commonly owned radio stations to be located in closer proximity. The next section, Part B, de-

scribes the principal city contour standard that we are adopting and explains our rationale for choosing this standard instead of the other options considered.

1. Negative Effects of the Current Rule

23. *Contour Overlap.* One of the main concerns expressed by the commenters was the need to lessen the overly restrictive effects of the present rule. In this regard, most commenters agreed that, by prohibiting the common ownership of two AM or FM stations whose 1 mV/m contours overlap, the present rule prohibits overlap well beyond the area in which most radio listening occurs. Specifically, commenters asserted that the present restrictions are overbroad in effect because they ignore: (1) interference limitations on the 1 mV/m signals of AM stations; (2) differences in stations' ability to serve the entire area encompassed by the 1 mV/m contour; (3) the extent of competition from other media within the overlapping contours; (4) the classes of stations involved; (5) the nature of terrain at issue; (6) the population and economic conditions of the overlap areas; and (7) the audience ratings of the relevant stations with overlapping contours.

24. Under the AM and FM principal city rules, broadcasters are required to place a minimum signal strength over their communities of license or the "principal city" that the station serves, and the coverage area or range of this signal is defined by this contour.[24] Because a station can be best received in the region within its principal city contour, most of a station's listeners are expected to be located in this area. For example, NBC demonstrated in its comments that the percentage of the total audience for its AM stations located within their 5 mV/m or principal city contours ranges from 66.7% to 83.7%.[25] Similarly, with respect to NBC's FM stations, the percentage of the total audience located within the 3.16 mV/m or principal city contour ranges from 58.9% to 91.9%.[26] For this reason, we believe that it is appropriate to relax our contour overlap standard to a principal city contour standard.

25. *AM Stations.* As pointed out in the *Notice* and agreed to by most of the commenters, the 1 mV/m signals for AM and FM stations do not yield equal reception quality, with the 1 mV/m AM signal being far less receivable due to noise and interference levels on the AM band than the 1 mV/m FM signal.[27] In addition, geographic factors distort AM coverage in ways that do not affect FM coverage. For example, predicted AM coverage extends much further over water than land, and much further over certain types of soil than others.[28] As a result, the present overlap standard results in an effectively stricter rule for AM than for FM.

26. The Commission recognized this disparity when it adopted the 1 mV/m standard for both AM and FM stations, but nevertheless determined that "a 1 mV/m AM signal does provide acceptable service in less populated areas where overlap between co-owned stations is more likely to occur."[29] Given the dramatic growth in FM stations since 1964 and the declining economic health of many AM stations,[30] however, the present marketplace no longer warrants a duopoly standard that unduly handicaps AM stations as compared to FM stations.[31]

2. Changed Circumstances Affecting Diversity and Competition

27. Although the benefits flowing from the promotion of the degree of station ownership diversity established in the radio duopoly rule may have outweighed the detriments caused thereby when the current version of the rule was adopted in 1964, the balance has since shifted because of the substantial increase in the number and variety of media outlets that has occurred during the intervening years. This growth has been documented in great detail by the commenters in this proceeding. The commenters have also provided record evidence that allowing common ownership of stations in closer proximity would produce cost savings and efficiencies that may benefit the public interest.

28. *Market Growth.* As the *Notice* and commenters in this proceeding have pointed out, significant growth in the communications marketplace has occurred since the current radio duopoly rule was adopted.[32] In the traditional over-the-air broadcast services, this growth has been dramatic. For example, since 1964, the number of authorized stations -- *i.e.*, those that are licensed, on-air, or under construction -- has increased by 88.7%.[33] These increases have, most notably, been due to growth in the FM and television services. From 1964 to the present, for example, the number of FM stations grew by 237% as FM broadcasting became competitive with the AM service and, recently, surpassed it in terms of total revenues and audience share.[34] Similarly, during this same time period, the number of TV stations grew by 131%, as the UHF television service matured and became profitable.[35] Additional growth in these traditional broadcast services can also be expected due to several recent Commission actions.[36]

29. Moreover, in 1964 the Commission was not able to include in its calculus the future roles of new video technologies, particularly cable television and VCR's. Indeed, cable was in an early stage of development during those years, with a relatively small number of systems and subscribers,[37] and VCR's were virtually nonexistent. Today, however, both cable and VCR penetration exceed 50% of the nation's television households. As we found in our recent Syndicated Exclusivity rule making, cable has become a competitor rather than a mere supplement to broadcast television for programming, audiences, and advertising revenues.[38] More importantly, these new technologies are playing a significant role in enhancing diversity, especially in small markets where the cable penetration is actually greater than the national average.

30. More significantly for this proceeding, the foregoing growth in media outlets nationwide has occurred at the local level in media markets of all sizes -- large, medium, and small. The *Notice* solicited and we received a great deal of data on this matter, including the NAB study cited earlier. While NAB's study focuses on the availability of media outlets in DMA's, which are essentially television markets, we have further examined the availability of commercial radio stations in the smaller Metropolitan Statistical Areas (MSA's), as defined by the U.S. Department of Commerce, because these measures are widely used for many statistical purposes.[39] In particular, we have counted the number of commercial radio stations operating within each of the top 175 MSA's in 1987. We found that, although the number of radio stations per MSA market is less than that found in the NAB study of DMA's, there are still a significant number of commercial

radio outlets in these local markets. For example, the average number of radio stations ranges from 35.28 stations per market in the top 25 markets to 10.48 stations per market in markets 150-175.[40]

31. *Viewpoint and Programming Diversity*. Given this increased availability of media outlets throughout local markets of various sizes, as outlined above, we find that relaxing the radio duopoly rule would not adversely affect the viewpoint and programming diversity goals at the local level. We recognize that there are still fewer channels available than there are parties interested in becoming licensees, as noted by CFA in its comments.[41] But virtually all valuable resources fit this characterization, and we do not believe that scarcity is a reliable indicator of the degree of viewpoint or programming diversity. For example, that logic suggests that there would be no diversity problems in a small market with one or two media outlets and a frequency lying fallow, whereas there would be an absence of diversity in New York City because there are no unused frequencies but many media outlets. Although liberalizing the radio duopoly rule might affect diversity of ownership to some modest degree, the rule will still be in place to prohibit ownership of two AM or FM stations located in the same principal city. Furthermore, our refinement of the contour overlap standard will not adversely affect the public interest because of the substantial increase that has taken place in the number of media outlets in markets of all sizes and the benefits of allowing common ownership of radio stations in closer proximity.

32. *Economic Competition*. We also considered the effect that increased media outlet availability has had on the radio duopoly rule's complementary goal of promoting economic competition among media outlets in order to encourage efficient pricing and provision of service, specifically focusing on whether relaxing the rule would pose any risk of harm to competition within local markets of varying sizes. After reviewing the various studies and data on economic concentration throughout radio markets of different sizes described in Part III, we conclude that the increased availability of media outlets has virtually eliminated the risk of any reduction in competition that may occur as a result of relaxing the radio duopoly rule.

33. For example, NAB's market concentration study, described in paragraph 14 *supra*, showed that local radio markets have HHI's well below the levels which trigger antitrust concerns under DOJ's *Merger Guidelines*. Moreover, it must be borne in mind that NAB's study used a very narrow "product" or advertising market definition,[42] measuring only the listening audiences of commercial radio stations. As a result, the study does not measure competition from television stations, newspapers, and cable television systems. But the record in this proceeding indicates that these other media do provide competition for advertising with radio. For example, several commenters pointed out that, recently, commercial radio stations have begun to face significant competition from local cable television systems which sell advertising on an "interconnected" basis under which the same ad would appear on numerous local cable systems.[43] To the extent that these other media do compete with commercial radio stations, then NAB's HHI estimates actually *overstate* the potential market power which commercial radio stations might have in local markets.

34. In view of the above, we conclude that the potential risks of undue concentration are far less from a competition standpoint than they may have been in 1964 when the current version of the radio duopoly rule was adopted, regardless of market size. Accordingly, these findings also support relaxation of the rule.

3. Public Interest Benefits of Common Ownership

35. We also received a great number of comments and supporting data which suggest that the common ownership of broadcast stations in the same area or in closer proximity would result in many public interest or consumer welfare benefits.[44] Because these studies are directed towards joint ownership of stations that are co-located and share common facilities, however, the findings may not be wholly relevant to the present modification of the radio duopoly rule, whereby common ownership of radio stations in the same service within the same principal city will continue to be prohibited. Nevertheless, adoption of the principal city standard would make possible the common ownership of more than one AM or more than one FM station in the same geographic area. This would be especially true of radio stations with small service areas -- such as Class A FM stations or AM stations with higher frequencies and/or lower power and located in an area of low conductivity. Under such circumstances, it would be possible to own two or more radio stations in the same service that are licensed to communities in the same geographic region.

36. Although these commonly owned stations would not be able to locate their entire studio and transmitter facilities in the same buildings under our rules, they, nevertheless, would be able to take advantage of other significant efficiencies from joint operation. Specifically, allowing the joint ownership of two radio stations in the same market could enable broadcasters to realize cost savings by consolidating general and administrative functions such as accounting, billing, and payroll. Similarly, there could be cost savings in advertising and promotion through the use of a common sales force, and some studio facilities may be shared (although a station's main studio must be located within its principal community contour).[45]

37. Furthermore, the cost savings and aggregated resources of combined radio-radio operations may also contribute to programming benefits to the public, especially with regard to the type of programming that the multiple ownership rules were intended to encourage -- news, public affairs, and non-entertainment programming.[46] Finally, permitting combined radio-radio operations in the same area may provide other service benefits to the public, such as enabling struggling radio stations, especially AM stations, to continue to provide service to the public.[47] This could occur because the superior resources of one station or the cost savings resulting from combined operations may contribute to the economic viability of a struggling station in the same or a different broadcast service, enabling the latter to stay on the air.[48] As previously discussed, some of these efficiencies may not be achieved to the maximum extent possible because our proposal to relax the radio duopoly rule does not contemplate permitting the common ownership of two AM or two FM stations in the same community (although such joint ownership would be possible within the same television market). However, these efficiencies and the

public interest benefits resulting therefrom will be addressed in conjunction with our proceeding relaxing our one-to-a-market policy.[49]

B. THE NEW PRINCIPAL - CITY CONTOUR STANDARD

38. As stated previously, in view of the record in this proceeding, we have concluded that the public interest would be best served by refining the radio duopoly rule to prohibit common ownership of stations in the same service where the principal city contours overlap. This is the approach proposed by the *Notice* and supported by most of the commenters[50] -- to prohibit the common ownership of two or more commercial radio stations in the same broadcast service if their principal city contours overlap (*i.e.*, the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations).[51]

39. This new standard more accurately reflects stations' listenership than the former 1 mV/m standard and recognizes the differences in signal propagation between AM and FM stations. Indeed, as noted above, these principal city service contours -- the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations -- are the minimum signal strengths that AM and FM stations are required to place over their communities of license. Therefore, it is expected that most of a station's listeners will be located within this area. Similarly, the use of a principal city contour standard will eliminate the inequity between the current treatment of AM and FM stations because it more accurately reflects the relative differences in signal reception quality of AM and FM signals than does applying the 1 mV/m standard to both AM and FM stations.

40. In addition to relieving some negative effects of the current radio duopoly rule, adopting a principal city contour overlap standard would permit commonly owned stations to be located closer together than under the present 1 mV/m standard, enabling station owners to take greater advantage of at least some of the economies of scale and related cost savings inherent in the joint ownership of stations in the same market, as described above. The precise distance between commonly owned stations will vary from one situation to another because of the numerous variables involved, such as the class of station, its operating facilities, and its geographic location. Moreover, even more variables are involved with respect to AM stations because an AM station's propagation is significantly affected by the station's frequency and power and the ground conductivity of the soil in that particular region of the country.

41. Finally, we find that this modification is unlikely to adversely affect our traditional competition and diversity goals. Adopting the principal city standard merely alters the focus of these concerns to core areas where most competition for radio listenership and radio advertising occurs. Indeed, not only will the radio duopoly rule continue to be in effect to address these concerns, but also the federal and state antitrust laws will be available as remedies to deal with any instances where mergers of radio stations would pose an anticompetitive threat to other stations in the market or to the public. In any event, the NAB competition study comparing the HHI's or concentration levels of different radio markets, discussed at paragraph 14 *supra*, indicated that relaxing the rule will not adversely affect economic competition.

42. We note that three commenters, CFA, UCC, and NBMC, have questioned our legal authority to change the local ownership rules on the grounds that such a change would be inconsistent with recent precedent and policy statements concerning our diversity goal. Specifically, these commenters observe that we relied heavily on the existence of the local ownership restrictions in eliminating the regional concentration rule and relaxing the national multiple ownership restrictions.[52] The limited action that we are taking in this proceeding, however, retains the substance of the radio duopoly rule. In particular, the principal city contour standards that we are adopting are better measures of actual station coverage and listenership than the existing 1 mV/m standard.[53]

43. *Other Options Considered.* In the course of deciding to adopt this principal city contour standard, we gave serious consideration to several other ways of modifying the radio duopoly rule, as suggested by the commenters in this proceeding. These options included (1) leaving the rule in its present form; (2) relaxing the rule only for AM stations; (3) adopting a case-by-case waiver approach; and (4) completely eliminating the rule. The first alternative, retaining the present rule, was rejected as unnecessarily stifling to the growth of competition and detrimental to AM broadcasters because of the discriminatory effects of the rule. In addition, this option fails to allow station owners to take advantage of the significant efficiencies, cost savings, and other benefits of common ownership.

44. Second, recognizing the problems of generally declining revenues and audience ratings faced by AM broadcasters, several commenters proposed relaxing only the AM duopoly rule.[54] Specifically, they suggested using the 5 mV/m overlap standard instead of the current 1 mV/m benchmark or, alternatively, using a non-technical standard such as allowing the co-ownership of two AM stations in the same television market or geographic area provided that they are not licensed to the same community or radio market. This approach would preserve the existing level of diversity and competition among FM stations within individual communities but would still enable AM broadcasters to take advantage of the efficiencies and related cost savings inherent in joint operations and thereby to compete more effectively in the marketplace.[55] However, this option would ignore the advantages that could result from relaxing the duopoly rule for *both* AM and FM services. Furthermore, as stated earlier, such a course would retain an overly restrictive and discriminatory rule for FM stations for no apparent reason. Thus, we have rejected it because, given the benefits to both AM and FM stations and their listeners through the modification we are adopting here, we believe it would be undesirable to make changes that only benefit AM stations.

45. A third alternative considered was to amend the radio duopoly rule so that consideration would be given on a case-by-case basis to the relevant circumstances in each market.[56] Such factors could include the same factors that the Commission formerly utilized when it had a case-by-case approach to radio duopoly questions.[57] The weakness of this approach, however, is that it would not specifically address the overly restrictive and discriminatory effects of the present rule. In addition, such a cautious approach could produce substantial administrative burdens which would not seem justified in light of the strength of the record in this proceeding.

46. It should also be noted that a few commenters[38] supported elimination of both the AM and FM duopoly rules. In essence, these commenters believe that the growth in the availability of media outlets in individual markets has been so great that there is no need for these rules to promote viewpoint diversity or competition. Indeed, the parties favoring this solution believe that owning two AM or two FM stations in the same community is no different in effect from owning an AM-FM combination, which is currently permitted under our rules. Furthermore, in the event that there were any substantial concentration of control problems arising from eliminating the rule, these commenters believe that the antitrust laws are always available to deal with such matters on a case-by-case basis when radio mergers are proposed. However, we did not seriously consider this option because it was not within the scope of the proposals set forth in the *Notice* in this proceeding. In addition, we believe that the modest change we have made in our rule is appropriately a more cautious and careful approach.

47. For the reasons set forth above, we decided that the public interest would best be served by revising the radio duopoly rule to proscribe the common ownership, operation or control of radio stations in the same service where the principal city contours overlap. We find that the principal city standard will provide the most benefits with the least detriment to our diversity and competition concerns. Specifically, this modest approach best reflects stations' true coverage areas or listenership, and best furthers our traditional policy goals while enabling broadcasters and the public to take greater advantage of the benefits of greater common ownership.

SUMMARY

48. In sum, we find that the record supports our initial evaluation in the *Notice* that the radio duopoly rule should be liberalized to permit commonly owned commercial radio stations to be located in closer proximity to one another. Therefore, we are relaxing the rule to a principal city contour standard, which will remedy the overly restrictive and discriminatory effects of the current standard while preserving the substance of the rule. Under this new standard, the common ownership of commercial radio stations in the same service will still be prohibited within the stations' principal city contours, where most of the stations' listeners are located. Although this new approach will lead to more radio combinations within the same ADI market or geographic area, we do not believe that this will adversely affect our traditional diversity or competition concerns because of the substantial growth in media outlets in all size markets. In addition, permitting common ownership of radio stations in closer proximity may enable the public and broadcasters to take advantage of some of the efficiencies and cost savings attributable to common station ownership. We find that the refinements to the rule that we adopt today best balance these benefits against the concerns of some parties that altering the rule would substantially affect diversity and economic competition.

FINAL REGULATORY FLEXIBILITY ANALYSIS

I. Need for and Purpose of this Action:

The action is taken to relax the radio duopoly rule, thus recognizing the substantial public interest benefits of common station ownership while fostering maximum competition in broadcasting and diversification of programming and viewpoints. Although the local ownership rules were originally intended to ensure diversification of viewpoints and programming, that purpose is now adequately served by the tremendous growth in the number and the variety of media outlets in recent years. In addition, comments submitted in this proceeding indicate that the radio duopoly rule may actually be inhibiting the goals of promoting programming diversity and economic competition, especially in markets where there are already a great number of media outlets. Thus, we believe a relaxation of the rule is appropriate.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No comments were received relating to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected:

Four alternatives were considered before adopting the instant action. The first option was to leave the radio duopoly rule in its present form. This course of action was rejected as unnecessarily stifling to the growth of competition and detrimental to AM broadcasters in particular. In addition, this option fails to allow station owners to take advantage of the significant efficiencies and cost savings inherent in common ownership.

A second alternative considered was to eliminate the rule. Some commenters argued that the growth in the number of media outlets in individual markets has been strong enough to eliminate the need for the duopoly rule. In addition, they pointed out that the ownership of two AM or two FM stations in the same market, restricted by the duopoly rule, would be similar to owning an AM-FM combination, which is now permitted under Commission rules. These commenters also stated that any concentration of control problems which might arise from elimination of the radio duopoly rule could be settled on a case-by-case basis by antitrust laws. This alternative was not seriously considered, however, because it exceeds the scope of the *Notice*, and it has been rejected at this time in favor of the more cautious, incremental action adopted.

The third alternative considered involved relaxing only the AM duopoly rule. Specifically, in recognition of the generally declining revenues and audience rating problems facing AM broadcasters, several commenters suggested using the 5 mV/m overlap standard instead of the current 1 mV/m standard, or alternatively, using a non-technical standard such as allowing the co-ownership of two AM stations in the same market provided that they are not licensed to the same community. This option would preserve the existing level of diversity and competition among FM stations within individual communities, but would still allow AM broadcasters to take advantage of the efficiencies and related cost savings inherent in joint operations. However, these benefits would be denied to FM stations.

The final option considered and rejected was amendment of the radio duopoly rule to allow consideration on a case-by-case basis of the relevant circumstances (such as interference limitations, classes of stations involved, and the public interest benefits of common ownership) in each market. This alternative was dismissed because it would produce substantial administrative burdens without providing the benefits inherent in specifically relaxing the rule.

The modifications which we enact in this decision, permitting the common ownership of two or more commercial radio stations in the same broadcast service in the same market if their principal city contours do not overlap, strike the right balance between our concern for programming and viewpoint diversity and the benefits inherent in the common ownership of stations.

The Secretary shall send a copy of this First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.*, (1981)).

PAPERWORK REDUCTION ACT STATEMENT

The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

49. Authority for the rule changes adopted herein is contained in Sections 4(i) and (j), and 301, 303, 308 and 309 of the Communications Act of 1934, as amended.

50. Accordingly, it is ORDERED, that the amendments to the Commission's Rules and Regulations, as set forth in the Appendix below, ARE ADOPTED.

51. It is FURTHER ORDERED, pursuant to the Administrative Procedure Act, 5 U.S.C. Section 553(d)(1), that these amendments, which relieve a restriction, SHALL BE EFFECTIVE immediately upon adoption of this First Report and Order.

52. In addition, it is FURTHER ORDERED, that all pending waiver requests involving radio station combinations that would be permissible under the amendments to the radio duopoly rule adopted herein will be DISMISSED as moot by the staff, pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 CFR, Part 73 of the Commission's Rules is amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 1, 5, 4 and 303.

2. Section 73.3555 (a)(1) is amended by replacing "1 mV/m" with "5 mV/m" and (a)(2) is amended by replacing "1 mV/m" with "3.16 mV/m", as set forth below:

73.3555 Multiple ownership.

(a) * * *

(1) Any overlap of the predicted or measured 5 mV/m groundwave contours of the existing and proposed AM stations, computed in accordance with § 73.183 or § 73.186; or

(2) Any overlap of the predicted 3.16 mV/m contours of the existing and proposed FM stations, computed in accordance with § 73.313; or

* * * * *

FOOTNOTES

[1] 47 C.F.R. Section 73.3555(a)(1) and (2) (1986).

[2] *See* 47 C.F.R. Section 73.24(j) (1986) (defining AM "principal community" or principal city contours); 47 C.F.R. Section 73.315(a) (1986) (defining FM "principal community" or principal city contours).

[3] 2 FCC Rcd 1138 (1987), *summarized*, 52 Fed. Reg. 8086 (March 16, 1987). In response to a motion, the deadline for filing comments in this proceeding was extended for 60 days to June 15, 1987, and the date for filing replies was modified to July 15, 1987. *See Order* 52 Fed. Reg. 12945 (April 20, 1987).

[4] Only four commenters -- the Consumer Federation of America (CFA), the National Black Media Coalition (NBMC), the United Church of Christ (UCC), and El Mundo Broadcasting Corporation -- opposed the Commission's proposed modification of the radio duopoly rule. Although a few of these commenters presented independent evidence in support of their positions, as discussed *infra*, they did not submit statistical studies or analyses specifically refuting the data discussed in this report. CFA did reference two earlier studies, conducted by the Radio and Television News Directors Association, regarding broadcasters' use of cost savings achieved through deregulation; these studies will be discussed in our subsequent report on the radio-television cross-ownership rule.

[5] Regulation 3.106, adopted in the *Report on Chain Broadcasting*, Commission Order No. 37, Docket No. 5060, May, 1941.

[6] *See Order No. 84-A*, 8 Fed. Reg. 16065 (November 23, 1943) (AM "Duopoly Rule").

[7] *See* 47 C.F.R. Section 73.3555(a) (1986).

[8] *Report and Order* in Docket No. 14711, 45 FCC 1476, 1480 (1964), *recon. granted in part and denied in part*, 3 R.R. 2d 1554 (1964).

[9] *Notice*, 2 FCC Rcd at 1141. *See* paras. 26-27 *infra*.

[10] *Id.*, *quoting Associated Press v. United States*, 326 U.S. 1, 20 (1945).

[11] *Report and Order* in Docket No. 14711, 45 FCC at 1477 (1964).

[12] *See Report and Order* in Gen. Docket No. 83-1009, 100 FCC 2d 17, 38 (1984), *recon. granted in part*, 100 FCC 2d 74 (1985), *appeal pending sub nom. National Ass'n of Black Owned Broadcasters v. FCC*, No. 85-1139 (D.C. Cir. March 19, 1985) *("12-12-12 Order")*.

[13] *First Report and Order* in Docket No. 18110, 22 FCC 2d at 314.

[14] *Id.* at 314.

[15] *See, e.g.*, Comments of Bonneville International at 6-10 (Salt Lake City, Anchorage, and Fairbanks, Alaska); Comments of Capital Cities/ABC at 14-21 (New York, Portland, and Memphis); and Comments of Fisher Broadcasting at 5-6 (Seattle-Tacoma and Portland). All market ranks referred to in this note are based upon A.C. Nielsen's ranking of Designated Market Areas.

[16] *See, e.g.*, Comments of CBS, Inc. (top twenty TV markets and TV markets 51-55); Comments of NAB (all 209 DMA TV markets); Comments of NBC (top 75 radio markets and top 75 television markets); and Jet Broadcasting (top 150 radio markets).

[17] Comments of NAB, Appendix B, "An Analysis of Media Outlets by Market" (June 1987) (NAB Media Outlet Study). Specifically, the study counted the following media outlets: (1) the total number of television stations within each DMA; (2) the number of commercial radio stations (AM, FM, and combinations) which have a reportable audience share and are located within each DMA's recognized "metro" areas; (3) the number of newspapers published within each DMA; (4) the number of significant newspapers and periodicals within each DMA -- *i.e.*, those whose circulation figures equal at least 5% of the households; (5) cable penetration (the percentage of television households within each DMA that subscribe to cable television) and the average number of cable channels in use in each market; and (6) the VCR penetration within each DMA (the percentage of television households with VCR's).

[18] NAB Media Outlet Study at 1.

[19] The following table sets forth the average number of broadcast outlets in different market categories:

Market	TV	AM	FM	Total
1-25	13.4	29.8	29.2	72.4
26-50	7.6	15.8	13.4	36.8
51-75	7.5	14.1	12.1	33.7
76-100	6.7	10.5	9.0	26.2
101-125	5.6	7.6	8.1	21.3
126-150	5.7	9.2	9.0	23.9
151-175	3.9	4.8	5.0	13.7
176-200	2.8	3.6	3.8	10.2
201-209	3.1	2.5	3.3	8.9

NAB Media Outlet Study, Figure I. Although there appear to be slight mathematical errors in a few of these calculations, we do not believe that those errors affect the general findings of the study in any way.

[20] Specifically, NAB calculated the Herfindahl-Hirschmann Index (HHI) (used by DOJ to assess the effect on competition of the merger of two or more firms in the same industry by considering the relative market shares of all the firms) for each radio market. Markets with an HHI below 1,000 are classified as "unconcentrated," markets with HHI's between 1,000 and 1,800 are "moderately concentrated," and those with HHI's over 1,800 are considered to be "highly concentrated." Department of Justice, *Revised Merger Guidelines*, 49 Fed. Reg. 26823 (June 29, 1984).

[21] *See* Wilkofsky Gruen Associates Inc., *Market Concentration Analysis* (April 14, 1987) (CBS Concentration Study), attached as Appendix D to Comments of CBS, at Table IV.

[22] Several other proposals were advanced as well. NBC suggested a market-by-market approach. Under this approach, the Commission would consider the extent of competition within the market and examine several factors, including: (1) interference limitations; (2) extent of competition by other mass media outlets in the overlap areas; (3) classes of stations involved; (4) areas, populations and economic conditions within the overlap area; (5) audience ratings of the relevant stations within the overlap area; and (6) public interest benefits of common ownership. Other parties advocated the adoption of a case-by-case approach, specific relief for small AM stations, or permitting the common ownership of all AM stations except those licensed to the same community.

[23] As noted *infra* at paragraph 35, the evidence submitted in this proceeding regarding the efficiencies and cost savings of joint station ownership may not be wholly relevant to the present modification of the radio duopoly rule, because common ownership of radio stations in the same service will still be prohibited in the same principal city or main listening area. Accordingly, we have made only general reference to potential efficiency benefits in this proceeding and plan to address the arguments on both sides of this issue more thoroughly in a future decision regarding our one-to-a-market rule (which currently prohibits joint ownership of radio and TV stations in the same market).

[24] *See* 47 C.F.R. Sections 73.24(j), 73.315(a) (1986).

[25] *See* Comments of NBC at Exhibit 27.

[26] *Id.* at Exhibit 28.

[27] *See Notice*, 2 FCC Rcd at 1141.

[28] *See* Comments of Jimmy L. Ray at 3.

[29] *Report and Order* in Docket No. 14711, 45 FCC at 1483-84. The Commission added that "[i]n this sense. . .[the AM and FM contour standards] are roughly comparable. . . .we have chosen a signal level which provides an adequate signal for reception in areas where overlap is most likely to occur and, in each case, the chosen signal level contour encompasses an area relatively free from co-channel and adjacent channel interference." *Id.* at 1484.

[30] *See Report on the Status of the AM Broadcast Rules (AM Report)*, prepared by Mass Media Bureau, Gen. Docket No. 87-26, released April 3, 1986, Appendix 1, at 82-88.

[31] Comments of Shamrock Broadcasting, Inc. at 5-6. On the other hand, our acknowledgement of the existence of this inequitable treatment of AM stations under the present rule does not mean we should relax the duopoly rule only for AM stations. For the reasons stated in paragraph 44, *infra*, such an approach would ignore the advantages to the public of relaxing the rule for both AM and FM stations.

[32] *See Notice*, 2 FCC Rcd at 1140.

[33] These percentages, as well as others discussed *infra*, are based upon station totals contained in the following chart, illustrating growth in various categories of stations for 1964 and 1988.

Year	AM	FM	TV	Total
1964	4,061	1,628	775	6,469
1988	4,923	5,493	1,791	12,207

The figures for 1964 are derived from *FCC Annual Report - FY 1964*, at 78. The 1988 station totals are based upon Commission records as of October 31, 1988.

[34] *Id. See also AM Report* at Appendix 1, at 82-88.

[35] In addition to the growth in the traditional broadcast services, there has been a rapid expansion in the new low power television service. Established in 1982, there are currently 399 on-air stations and 1,329 outstanding construction permits for new stations in this service. *Broadcasting*, November 7, 1988 at 14.

[36] For example, in BC Docket 80-90 and in other related proceedings, we established 689 new commercial FM allotments, most of which are in medium and small radio markets, and created three new classes of FM channels to encourage the development of even more FM stations beyond those already allocated.[15] *See Report and Order* in BC Docket No. 80-90, 94 FCC 2d 152 (1983), *recon. denied*, 49 Fed. Reg. 10260 (March 20, 1984); *see also Implementation of BC Docket No. 80-90*, 100 FCC 2d 1332, 1340-1378 (1985). Furthermore, a significant number of new AM stations are likely in the future when the band from 1605 kHz to 1705 kHz becomes available for AM broadcasting as a result of international agreements. *See Fourth Notice of Inquiry* in Gen. Docket No. 84-467, FCC No. 88-72 (released June 3, 1988).

[37] In 1964, there were only approximately 1,200 operating cable systems and 1,085,000 subscribers, as compared to 8,000 cable systems and 43,279,980 subscribers in 1987. *Television and Cable Factbook*, Cable and Services Volume, 1987 Edition, Number 55, at A-40.

[38] *Report and Order*, Docket No. 87-24, 3 FCC Rcd 5299 (1988).

[39] For the purposes of computing the number of stations in a particular local market, it is more appropriate to utilize a widely used statistical market measure, such as the MSA, than to attempt to measure the principal city contours of all the stations in the area. Although we have argued that most listening occurs within a station's principal city contour, other stations located within the same local area but outside that contour may nevertheless provide competition for and be receivable by some portion of the station's audience. In addition, because every station in a local market may have a different area of signal and audience coverage from every other station, using a principal city standard in this context would seem unduly burdensome.

[40] The following table lists the average number of commercial radio stations in various market categories:

Market	Average Number of Commercial Radio Stations in 1987
1-25	35.28
26-50	22.68
51-75	19.24
75-100	16.68
100-125	13.48
125-150	12.48
150-175	10.48

Station totals are derived from data contained in *Spot Radio Rates and Data*, September 1, 1987 at MD-22. Furthermore, the market rankings that we used are based upon the total population within each MSA. As a result, the rankings may differ in some respects to those done by Arbitron, which ranks markets according to total numbers of listeners that are 12 years of age or older.

[41] Comments of CFA at 5-6.

[42] The "products" involved in competition analysis of broadcast media are the listening or viewing audiences, which are in effect sold by radio and television stations to advertisers. *See, e.g.*, B. Owen, *Television Economics* at 4-6 (1974). The relevant product market is thus measured by the substitutability of different media (*i.e.*, radio, television, cable, and newspapers) for the purposes of purchasing advertising.

[43] *See, e.g.*, Comments of Hudson Group Limited Partnership of Pennsylvania and Wisconsin and articles appended thereto.

[44] For example, commenters provided evidence that suggests that there would be meaningful efficiencies inherent in owning and operating AM-AM or FM-FM combinations in the same market that would produce cost savings. In essence, these studies found that radio-radio combinations can take advantage of economies of scale in the critical areas of staffing, advertising, and capital expenditures for equipment and physical facilities. *See, e.g.*, Comments of Clear Channel Communications, Inc. at 6-8; Broadcast Investment Analysts, "Analysis of the Efficiencies of Joint AM Operations," attached as Appendix A to Comments of NAB in response to the *AM Report;* Reply Comments of FTC at 6-8.

[45] 47 C.F.R. Section 73.1125.

[46] In particular, the evidence shows that, at least with respect to television programming in general and radio programming of radio-TV combinations, group-owners may provide more informational, local, and other non-entertainment programming than non-group-owners. *See, e.g.*, Comments of NBC at 24 (comparing informational programming aired by NBC-owned stations and other stations in the top 25 markets in 1979); and Comments of NAB, Appendix D (comparing 1985 news and programming budgets of stand-alone radio stations with those of radio stations jointly owned with a television station).

[47] Other service benefits resulting from the cost savings of common ownership could be the possible activation of unused FM radio allocations, providing new broadcast service to the public, and improvement in the technical facilities of existing stations, such as increasing a station's power.

[48] Indeed, we have utilized this rationale in permitting, on a case-by-case basis, the common ownership of certain radio and UHF television stations in the same market. *See, e.g., American Public Life Broadcasting Co.*, 36 R.R. 2d 1181 (1976); and *Central Broadcasting Co., Inc.*, 21 R.R. 2d 482 (1971).

[49] Although some commenters asserted that these efficiency benefits are speculative, we find that the record in this proceeding more than dispels any doubts concerning the existence of benefits of common ownership. The opposition comments failed to refute any of the specific findings in the record, and offered no contradictory evidence of their own on these points. Therefore, we remain unconvinced by their arguments.

[50] *See, e.g.*, Comments of CBS, Taft Broadcasting, Group W, Tribune Broadcasting Company, Knight Quality Stations, Thomas Communications, Saga Communications, Midwest Family, Maryland-District of Columbia-Delaware Broadcasters Association, and Jet Broadcasting.

[51] We also note that several petitions for waiver of the radio duopoly rule are currently pending before us. To the extent that the proposed combinations are permissible under the amendments to the rule as adopted herein, we feel that the combinations should be allowed without consideration of the waiver petitions. To review the merits of these petitions would, in our

view, serve no public interest benefit. Accordingly, as we advised in our *Public Notice*, 53 Fed. Reg. 51780 (released December 9, 1988), all pending requests for waiver of the radio duopoly rule which would result in permissible combinations under the modified rule have been rendered moot and the underlying applications in those cases may be granted if it is otherwise permissible to do so.

[52] UCC and CFA have also maintained that the language of the 1984 Cable Act, 47 U.S.C. § 553(a), and the 1982 lottery amendments to the Communications Act, 47 U.S.C. § 309(i)(3)(A), suggests Congressional intent to codify existing local ownership rules. However, with respect to the lottery law, the preference for diversity contained in section 309(i) does not imply a legal barrier to modifying our multiple ownership rules; indeed, the lottery law itself does not preclude grants to nondiverse owners. In addition, the broadcast ownership prohibitions in the Cable Act apply only to cable-broadcast common ownership, and we are not addressing that area in this proceeding.

[53] Finally, CFA and NBMC argue that changing the local ownership rules would raise the prices of broadcast stations and thus impede new entrants into the broadcast industry, particularly minorities and women. We would not expect the rule changes adopted here to have a substantial impact on station prices. In addition, we believe that controlling broadcast station prices is not an appropriate Commission goal. To the extent that this rule modification may affect minorities and women, we believe that these concerns can be addressed by our other policies, such as distress sales, tax certificates, and comparative preferences, which are not affected by this decision.

[54] *See, e.g.*, Comments of National Telecommunications and Information Administration (NTIA), NAB, Shamrock Broadcasting, Cosmopolitan Enterprises of Victoria, Inc., and Johnson Broadcasting.

[55] A related alternative would be to relax both the AM and FM duopoly rules but provide a greater degree of relief for the AM service. For example, we could use the 3.16 mV/m overlap standard for FM but no such technical standard for AM, permitting instead the common ownership of two AM's even in the same community. *See, e.g.*, Comments of Clear Channel Communications, Inc. *See also* Comments of Booth American Company and Romar Communications, Inc.

[56] *See, e.g.*, Comments of NBC.

[57] *See Notice*, 2 FCC Rcd at 1138.

[58] *See, e.g.*, Comments of Washington Legal Foundation and Nelson Enterprises, Inc. *See also* Comments of Celia Communications, advocating elimination of the AM duopoly rule.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application of

ORLANDO CENTROPLEX File No. 225953-PL
City of Orlando
500 West Livingston Street
Orlando, Florida 32801

For a Waiver of the Rules to Allow
Operation of a Travelers' Information
Station on 1620 kHz

ORDER

Adopted: February 10, 1989; Issued: February 22, 1989

By the Chief, Private Radio Bureau:

I. INTRODUCTION

1. The Chief of the Private Radio Bureau has for consideration a request for waiver of the Travelers' Information Station (TIS) frequency assignment provisions of Section 90.242(a) of the Commission's Rules, 47 C.F.R. § 90.242(a), filed by the City of Orlando, Florida (City). This rule section limits the operation of a TIS facility[1] to either 530 or 1610 kHz. The City, however, seeks to operate its proposed TIS station on the frequency 1620 kHz[2] in order to avoid interference from AM broadcast stations operating below 1610 kHz. We are granting the requested waiver to the extent indicated below.

II. BASIS FOR WAIVER

2. In support of its waiver request, the City states that it requires a TIS station for the Orlando Centroplex, a sports and recreation facility located in Orlando adjacent to Interstate 4. The City proposes to operate the station for the purpose of providing information concerning traffic conditions and parking availability to motorists approaching and leaving the Centroplex facility.

3. The City indicates that it conducted an engineering study that revealed that interference potential from the operations of two local AM broadcast stations on the first adjacent channels to 530 and 1610 kHz makes it impractical to use either of these TIS frequencies. Specifically, station WGTO in Cypress Gardens, Florida, operates on 540 kHz and station WOKB in Winter Park, Florida, operates on 1600 kHz. These AM stations are located approximately 40 and 20 miles, respectively, from the City's proposed station. Consequently, the City is requesting authority to operate its station on 1620 kHz, a frequency that the City maintains can be received by most automobile AM receivers. The City states that it does not anticipate any harmful interference resulting from such operation.

III. DISCUSSION

4. Prior to the 1979 World Administrative Conference (WARC) in Geneva, Switzerland, the international Amplitude Modulation (AM) broadcast band consisted of the frequencies 535-1605 kHz. [3] As noted above, Section 90.242(a) of the Commission's Rules authorizes the frequencies 530 and 1610 kHz for TIS use. These frequencies are just below or above the traditional AM broadcast band.

5. The attending nations at the 1979 WARC meeting agreed to expand the upper limit of the AM band in the western hemisphere from 1605 to 1705 kHz. In 1984, the Commission initiated a proceeding to develop a record and prepare for future international conferences concerning the use of this expanded AM band.[4] A significant number of TIS stations are authorized to operate within this expanded AM band on 1610 kHz. Some of these TIS stations are licensed by this Commission.[5] Others are operated by federal agencies, such as the Department of the Interior, and are under the jurisdiction of the National Telecommunications and Information Administration (NTIA).[6]

6. Section 90.242(a)(2) of the Commission's Rules requires TIS stations to protect the operations of AM stations on adjacent channels from interference although TIS stations are not afforded protection from such AM stations. Thus, this rule section authorizes TIS stations on a secondary basis to all existing and subsequently authorized AM broadcast stations. TIS licensees, therefore, must locate where adequate service can be provided without causing interference.[7]

7. While operation of TIS stations on a frequency adjacent to AM broadcast frequencies has resulted in little difficulty in the past, the Commission has noted that it could become a significant problem once co-channel broadcast use of the expanded band takes place.[8] In this regard, the Commission has indicated that continued use of TIS systems on 1610 kHz may not be feasible after the authorization of the 1605-1705 kHz band for AM broadcasting.[9] In view of the expansion of the AM band, the Commission is considering moving existing 1610 kHz TIS users, as well as new TIS operations, to 1700 kHz.[10]

8. Turning to the instant waiver request, we conclude that the City has adequately demonstrated the requisite unique circumstances and the lack of any available alternative solution under the Commission's existing TIS frequency assignment provisions of the rules to warrant the relief requested.[11] A waiver of Section 90.242(a) of the Rules to allow operation on 1620 kHz,[12] moreover, will not undermine the public interest policy of minimizing interference that the rule seeks to protect.[13]

9. The City's continued authority to operate pursuant to this waiver on 1620 kHz, however, must be viewed in the context of the resolution of the issues discussed above that are currently under consideration in the Commission's expanded AM band allocation proceeding in Gen. Docket No. 84-467. Thus, our rule waiver is subject to the ultimate policies and procedures the Commission adopts to effectuate the authorization of AM broadcasting in the expanded 1605-1705 kHz band. In this regard, we emphasize that the City may be required to vacate 1620 kHz and move to another frequency, such as 1700 kHz, without a right to a hearing, prior to the expiration of the license term for the authorization issued pursuant to this

waiver.[14] Future operations on a new frequency would be governed by the rules and policies the Commission adopts concerning such use.

10. Accordingly, pursuant to Rule Sections 0.331 and 1.3, 47 C.F.R. §§ 0.331 and 1.3, IT IS ORDERED that the City of Orlando's request for waiver of Section 90.242(a) of the Rules to allow operation of a TIS facility on 1620 kHz on a secondary basis IS GRANTED subject to the outcome of the Commission's proceeding in Gen. Docket No. 84-467. This authority may be terminated at any time by the Commission without a right to a hearing.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTES

[1] A Traveler's Information Station is a base station in the Local Government Radio Service used to transmit non-commercial, voice information pertaining to traffic and road conditions, traffic hazard and traveler advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest. 47 C.F.R. § 90.7.

[2] In the United States, the frequency 1620 kHz is allocated on a primary basis for use by governmental and non-governmental radiolocation stations and broadcasting stations. In Alaska, this frequency is allocated to the maritime mobile services and the Alaska fixed service. These allocations are subject to implementation procedures and schedules that will be adopted as a result of the international Regional Administrative Radio Conference (RARC) proceedings concerning expansion of the AM band from 1605 to 1705 kHz. 47 C.F.R. §§ 2.106, 90.103; *see also* paras. 4-5 *infra*.

[3] *See* Report and Order, PR Docket No. 84-874, 50 Fed. Reg. 46048, November 6, 1988.

[4] For a history of this proceeding, *see* Third Report, Gen. Docket No. 84-467, 3 FCC Rcd 2345 (1988).

[5] These stations are authorized pursuant to Section 90.242 of the Commission's Rules.

[6] 3 FCC Rcd at 2347. The City has received NTIA's coordination approval to operate on 1620 kHz. Serial No. FCCM881262, August 23, 1988.

[7] A TIS authorization may be suspended, modified, or withdrawn by the Commission without prior notice or right to a hearing if necessary to resolve interference conflicts or to implement agreements with foreign governments. 47 C.F.R. § 90.242(a)(4). The TIS authorization granted herein to the City is, of course, subject to this rule provision.

[8] 3 FCC Rcd at 2347.

[9] 3 FCC Rcd at 2348.

[10] *Id.*

[11] *See* 47 C.F.R. §§ 1.3, 90.151.

[12] As noted in n.2 *supra*, 1620 kHz is located within the 1605-1705 kHz band allocated for use by radiolocation stations. Since this band has been reallocated for AM broadcasting, the rules permit continued operation but preclude the authorization of new radiolocation stations as of September 30, 1985. As of July 1, 1987, existing radiolocation stations can request modifications to change frequencies to the 1900-2000 kHz band. 47 C.F.R. §§ 90.103(c)(28) and (c)(29). Unlike the Radiolocation Service, where frequencies outside the expanded AM band are available, TIS stations currently have no access to alternative frequencies above the expanded AM band. Section 90.242(a)(3) of the Commission's Rules, moreover, currently permits operation of TIS stations on 1610 kHz, a frequency within the expanded AM band. Thus, we conclude that our authorization of 1620 kHz for TIS use in this instance, on a conditional basis, is appropriate despite the prohibition of grants for new radiolocation stations on this frequency until such time as procedures are adopted for authorization of AM broadcasting in the expanded band.

[13] *See* WAIT Radio v. FCC, 418 F.2d 1153, 1157; Thomas Radio Co. v. FCC, 716 F.2d 921 (D.C. Cir. 1983).

[14] *See* n. 7, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

RODNEY A. MCDANIEL File No. 00524-CL-AL-1-88

For Consent to Assignment of
Station KNKA 712 in the
Domestic Public Cellular
Telecommunications Service
for the Springfield, Missouri
MSA

ORDER ON RECONSIDERATION

Adopted: February 9, 1989; Released: February 22, 1989

By the Chief, Common Carrier Bureau:

1. The Mobile Services Division (MSD) granted Rodney A. McDaniel (McDaniel) a construction authorization for the nonwireline cellular system in the Springfield, Missouri Metropolitan Statistical Area. *Rodney McDaniel*, 2 FCC Rcd 5402 (1987). On January 22, 1988, the Commission granted McDaniel's *pro forma* assignment application whereby a corporation was created to be the licensee. The corporate entity created, The Cellular Telephone Company of Springfield, Inc. (CTCS) is owned by: McDaniel, 63.5%; American Cellular Corporation (ACC), 16.83%; and Transitech, Inc. (TI), 19.82%.[1] On March 3, 1988, MC Cellular Corporation (MC) filed a petition for reconsideration of this grant. McDaniel and CTCS filed an Opposition and MC filed a Reply.

2. In its petition MC asserts that McDaniel, ACC, TI, and Cellular Radio Corporation (CRC) signed an Option Agreement on July 22, 1986. The Option Agreement provided for CRC to receive 10% of the CTCS stock, McDaniel to receive 58.5%, TI to receive 16.2% and ACC to receive 15.3%. According to MC, the agreement also gave CRC an option to acquire 90% of the stock after the system became operational. By agreement signed on or around February 27, 1987, CRC gave MC an option to acquire its 10% and transferred its option on the remaining 90% to MC. MC further states that by letters dated October 9, 1987 and November 25, 1987, McDaniel stated his intention not to honor his contractual obligations to CRC and MC. Consistent with those letters, the assignment application did not show that CRC received 10% of the stock or that MC has an option to acquire that stock from CRC or the remaining 90% from the other shareholders. As a result, MC requests that the Common Carrier Bureau reconsider its action and condition the grant on CRC receiving 10% of the stock of CTCS as specified in the July 22, 1986 Option Agreement and MC having the option to acquire the remaining 90% of the stock.

3. In opposition McDaniel and CTCS allege the petition lacks merit and should be summmarily dismissed. McDaniel alleges that it did grant an option to CRC in exchange for, among other things, cellular equipment and CRC's firm financing commitment. McDaniel further maintains that when CRC did not fulfill its commitments, he amended his application to provide an alternative source of financing and equipment. McDaniel denies breaching any contractual obligations under the CRC option agreement and states he intends to vigorously oppose the claims being asserted against him in MC's civil action. Finally, McDaniel contends that MC's belated petition not only fails to raise issues cognizable by the Commission, but is blatantly in aid of its court litigation effort.

4. We decline to grant MC's petition for reconsideration. We find MC's objections to the assignment application to be without merit. In addition, we find that the MSD decision is factually and legally correct and that MC has not presented any reasons for reversal of this decision. The allegations arise out of an apparent option to purchase a minority of the system and an option for future purchase of the other 90% of the system. We find that the allegations amount to a contractual dispute between the parties and are, thus, a matter for a private cause of action. This Commission is not the proper forum for the resolution of private contractual disputes. These matters are appropriately left to the courts or other forums which have the jurisdiction to resolve them. *Sonderling Broadcasting Co.*, 46 Rad Reg 2d (P&F) 889, 894 (1979). *See also, Robert J. Kile*, 3 FCC Rcd 1087 (1988). MC's status is that of an attempted purchaser of a minority interest in the station. The Commission has held that minority owners cannot prevent the transfer of control of facilities on the basis that the transfer will cause them monetary harm. *Kile, supra*, at 1087. Finally, any harm which MC might suffer from the transaction can be satisfied by money damages pursuant to local judicial determination. Thus, our action does not in any way prejudice any remedy to which a court may ultimately determine MC is entitled. *Sonderling, supra* at 894. Therefore, we affirm the Mobile Services Division's order granting the assignment application.

5. Therefore, for the foregoing reasons, IT IS ORDERED, That the petition for reconsideration IS DENIED.

6. This order is issued under Section 0.291 of the rules and is effective on its release date. Applications for Review under Section 1.115 of the Rules may be filed within 30 days of the date of the public notice of this order. *See* section 1.4 (b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] The principals of TI are Jerome F. Prochaska (Prochaska) and George M. Snow (Snow).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 22, 1989

DELAYED IMPLEMENTATION OF REVISED QUARTERLY REPORT SPECIFICATIONS

1. On January 6, 1989, the Common Carrier Bureau released an Order (*Quarterly Report Order*) in CC Docket 86-182 (DA 88-2067) revising the Quarterly Report, FCC Form 43-01, to reflect the resolution of the technical issues delegated to the Common Carrier Bureau by the *ARMIS Reconsideration Order* (Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), 3 FCC Rcd 6375 (1988) (*ARMIS Order*), *modified on recon.*, FCC 88-331, released October 14, 1988).

2. We are delaying implementation of the effective date of that *Order* from October 1, 1988 to January 1, 1989 so that there will be consistency in reporting for all four quarters of 1988. Quarterly Reports for the fourth quarter of 1988 should be submitted according to the Quarterly Report specifications released on May 31, 1988.

For information contact Jane Frenette at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-131

In the Matter of

Unlimited Time Operation by Existing AM Daytime-Only Radio Broadcast Stations; Discontinuance of Authorization of Additional Daytime Only Stations; Minimum Power of Class III Stations

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 18, 1989; Released: February 22, 1989

By the Commission: Commissioner Dennis concurring and issuing a separate statement.

1. Before the Commission is a Petition for Reconsideration filed by Newsic, Inc. (Newsic), licensee of daytime-only station WRWH(AM), Cleveland, Georgia, seeking clarification of the *Report and Order* in this proceeding.[1] Specifically, Newsic requests explicit clarification that former regional channel daytime-only stations which, as a result of this proceeding, received nighttime authorizations at a power level below 250 watts will remain eligible, if they meet other established criteria, for the special comparative credit granted in Docket 84-231 to former AM daytimers competing in comparative hearings for new FM allotments. Newsic observes that, although the *Report and Order* makes passing reference to the daytimers' preference, it does not state that the preference is available to operators of former daytime-only stations who are presently operating on regional channels on a full-time basis with less than 250 watts nighttime power. Newsic submits that a clarification is needed to remove doubt about the eligibility of these operators for the preference and to enable them to assess correctly their comparative ranking vis-a-vis other applicants. Newsic contends that a clarification recognizing the eligibility for the preference of former regional channel daytimers now operating at night with less than 250 watts power would be consistent with the Commission's decision in Docket 84-231 to make the preference available to former daytimers operating on foreign clear channels at night with less than 250 watts power.[2]

BACKGROUND

2. To place Newsic's Petition in perspective, we review the rule making proceedings relevant to the issue which it raises. Our adoption in Docket 84-231 of the daytimers' preference [3] was the culmination of a process initiated by the National Telecommunications and Information Administration which submitted in 1981 a Petition for Rule Making suggesting that we seek ways to aid daytime-only licensees. In 1982, the Commission issued a *Notice of Inquiry and Notice of Proposed Rule Making* (NOI/NPRM) which considered a broad range of problems faced by daytime-only AM licensees and which included a proposal to grant a comparative preference to these licensees.[4] Subsequently, in this proceeding, we issued a *Notice of Proposed Rule Making* (NPRM) which, inter alia, solicited proposals designed to aid daytime-only AM licensees in obtaining FM broadcast stations in their community of license.[5] That NPRM expressed concern about the limitations of daytime-only operations, noted that many daytime-only licensees had long histories of outstanding service to their communities of license, and requested specific comments on the type of aid that could be provided to daytime-only licensees in the comparative process. Based on our own assessment of AM daytimers' problems and upon the broad range of comments received in response to the NPRM, we found substantial grounds for adopting the preference. Specifically, we recognized that AM daytimers had been burdened with the restriction of sunrise-to-sunset operation that deprived their audiences of night-time service and licensees of nighttime revenue. We found that the operation of a daytime-only station, despite technical limitations, provided a strong indication that, if given an opportunity, a daytimer licensee would operate an FM station in the same community in a manner that would further the public interest. We also determined that, by conferring a benefit upon daytimers in the form of the preference, we would thereby recognize their efforts as operators of limited facilities. We believed that such recognition would serve to encourage licensees operating in other services with technical limitations on the quality of their service to maximize provision of service to the public.[6] Our action adopting the daytimer preference and eligibility criteria for the preference did not distinguish between daytimers based on the types of channels on which they operate.

3. Subsequently, in Docket No. 84-281,[7] we recognized that new international agreements had eliminated restrictions on the nighttime use of certain foreign clear channels. Accordingly, we authorized nighttime operation for AM stations previously operating on a daytime-only basis on these channels. We determined that it would be appropriate to confer secondary status on the nighttime signal of any station with a newly authorized nighttime signal of less than 250 watts power.[8]

4. The question then arose, in petitions for reconsideration of our action in Docket 84-231, whether a station utilizing a nighttime authorization granted in Docket 84-281 would be ineligible for the daytimer preference because it was no longer a daytime-only station. We determined that because nighttime authorizations of less than 250 watts are given secondary status, licensees with such authorizations should be treated as daytime-only licensees. We concluded, therefore, that former daytime-only licensees operating on foreign clear channels who received nighttime authorizations of less than 250 watts as a result of Docket 84-281 should be treated as daytime-only stations for purposes of establishing eligibility for the daytimer preference.[9]

5. We next issued a Notice of Proposed Rule Making in this proceeding.[10] The basic proposal was to permit eligible daytime-only AM stations to operate at night on regional channels with a power of up to 500 watts, reduced as necessary to avoid interference to existing do-

mestic stations, facilities for which applications for new or modified stations were filed before the effective date of the new rules, and foreign stations. In this connection, we continued to distinguish between classes of stations that were authorized to operate at night with 250 watts or more power and those whose nighttime authorizations limited them to less than 250 watts power. Accordingly, we established two Classes of regional stations, *i.e.* a Class III station which is required to operate with a minimum of 250 watts nighttime power and whose signal has primary-service status, and a Class III-S station which is required to operate with less than 250 watts nighttime power and whose nighttime signal is given secondary status. Finally, the Commission decided to discontinue authorization of new daytime-only AM stations. We made no proposals concerning the daytimers' preference. In the *Report and Order* in this proceeding, we authorized nighttime operations for daytimers operating on regional channels and on two clear channels, 940 kHz and 1550 kHz. Again, for technical reasons, we classified nighttime operations with less than 250 watts power on these channels as a secondary service.

DISCUSSION

6. Newsic's Petition will be dismissed as a petition for reconsideration. At the outset, we note that Newsic's Petition is directed at a matter--the applicability of the daytimer preference to licensees which operate at night at less than 250 watts on regional channels--which goes beyond the original scope of this proceeding, and that, ordinarily, we would not consider it in the context of this proceeding. However, we shall treat the petition for reconsideration as a request for a declaratory ruling in order to remove this uncertainty.[11]

7. As indicated above, we adopted the daytimer preference in 1985 as part of our actions in Docket 84-231. In adopting this preference, however, we did not condition its availability on the type of channel on which a licensee operated. Our subsequent action in Docket 84-231 made clear that a former daytimer who received nighttime authorization to operate with less than 250 watts power on any of the foreign clear channels would still be considered to be a daytime-only licensee for purposes of determining eligibility for the daytimer preference. At the time when that decision was made, however, no daytimers had been authorized by the Commission to operate at night on any type of channel other than foreign clear channels. Thus the issue of other types of channels did not arise. We now take the opportunity to clarify our decision in Docket 84-231 to make the preference available to all former daytimers operating with secondary-service nighttime authorizations. We have consistently conferred secondary status upon Class II and Class III nighttime authorizations of less than 250 watts, *i.e.* upon Class II-S and Class III-S stations. Accordingly, former daytimers operating at night with an authorization of less than 250 watts power and which do not produce an effective field strength of 141 mV/m or greater at one kilometer will be considered daytime-only licensees for purposes of determining eligibility for the daytimer preference, regardless of the channel on which they operate.

8. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Newsic, Inc., IS GRANTED to the extent indicated as a Petition for Declaratory Ruling and is otherwise DENIED.

9. And, IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] 2 FCC Rcd 7113 (1987).

[2] *See Memorandum Opinion and Order* in MM Docket 84-231, 59 RR 2d 1221, n.27 (1986), *aff'd* 2 FCC Rcd 481 (1987). We note that the figure of 250 watts power utilized in Docket 84-231 assumed a station operating at minimum efficiency, prescribed in Section 73.189(b)(2)(ii) of the Commission's rules, such that the station produces an effective field strength of 141 mV/m at a distance of 1 kilometer from its transmitter site. Recognizing that stations operating with greater efficiency than that specified in the Rules can produce an effective field strength of 141 mV/m at one kilometer with less than 250 watts of power, such stations that received sufficient power to produce at least 141 mV/m at one kilometer were considered to be equivalent to a station operating with 250 watts or more. For ease of reference, we will utilize the figure of 250 watts power in this *Memorandum Opinion and Order* to denote 250 watts power at minimum efficiency or its effective field strength equivalent.

[3] *See Second Report and Order* in MM Docket 84-231, 101 FCC 2d 638 (1985).

[4] *See* BC Docket No. 82-538, 47 Fed. Reg. 38937 (September 3, 1982). While the NOI/NPRM was pending, the Commission began the first steps toward implementation of Docket 80-90. In that Docket, the Commission proposed that many of the new FM allotments be placed in communities presently served exclusively by daytime-only licensees.

[5] *See* 49 Fed. Reg. 11214 (March 14, 1984).

[6] 101 FCC 2d at 643.

[7] *See Report and Order* in Docket 84-281, 101 FCC 2d 1 (1985), *modified on reconsideration, Memorandum Opinion and Order*, 103 FCC 2d 532 (1986).

[8] *Id.* at 7.

[9] *Memorandum Opinion and Order* in Docket 84-231, 59 RR 2d 1227, n.27 (1986). Because we conferred primary-service status on former daytime-only stations receiving nighttime authorizations of 250 watts or more power, we concluded that licensees operating with such authorizations would be ineligible for the preference.

[10] *See* 3 FCC Rcd 3145 (1987).

[11] Section 1.2 of the Commission's Rules allows the Commission upon request or upon its own motion to "issue a declaratory ruling terminating a controversy or eliminating an uncertainty."

SEPARATE STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS

In the Matter of: Unlimited Time Operation by Existing AM Daytime-Only Radio Broadcast Stations; Discontinuance of Authorization of Additional Daytime-Only Stations; Minimum Power of Class III Stations, MM Docket No. 87-131

I write separately to express my concerns regarding the daytimer preference. This Commission has generally sought to adopt policies that promote diversification of ownership and encourage new FM licensees. As we have repeatedly emphasized, "[d]iversification of control [of mass media] is a public good in a free society, and is. . . a primary objective in the licensing scheme."[1] The daytimer preference could create obstacles to entry by qualified newcomers into FM broadcasting, and could limit the diversity of voices among FM licensees. It could also undermine the policies that this Commission has adopted to encourage minority ownership of broadcast stations. It is too early to assess whether the daytimer preference is operating to discourage new entry, but I believe we must monitor the effect of this enhancement very carefully to ensure that it does not cause results inconsistent with fundamental Commission policies.

FOOTNOTE FOR STATEMENT

[1] *See* Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 394 (1965).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-7

In the Matter of

Amendment of Section 73.3555
of the Commission's Rules, the
Broadcast Multiple Ownership Rules

SECOND REPORT AND ORDER

Adopted: December 12, 1988; Released: February 23, 1989

By the Commission: Commissioner Dennis dissenting in part and concurring in part with statement at later date.

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INTRODUCTION

1. By this action, the Commission is relaxing its prohibition against the common ownership of radio and television stations in the same television market, which is contained in Section 73.3555(b) of the Commission's Rules[1] (also known as the "one-to-a-market" or "radio-television cross-ownership" rule). Although we are retaining the rule, we are adopting a waiver policy under which we will look with favor upon certain waiver requests when the criteria specified herein are met. First, we will tend to look favorably upon waiver applications involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees or "voices" after the proposed merger. Second, we will also look favorably upon requests involving "failed" stations that have not been operated for a substantial period of time or that are involved in bankruptcy proceedings. We will consider other waiver applications on a more rigorous case-by-case basis which will place particular emphasis on the potential benefits of the combination, the types of facilities involved, the number of stations already owned by the applicant, the financial difficulties of the station(s), and the nature of the market in light of our diversity and competition concerns. In the context of a waiver of the radio-TV cross-ownership rule, we will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and one FM radio station within any single television "metro" market, as defined by Arbitron Ratings Company. This limitation is not intended to preclude the acquisition of stations when no waiver is required.

2. Our decision to establish this new waiver policy is based on our experience in implementing the one-to-a-market rule, the substantial growth in the number of media outlets in markets of all sizes since the rule was adopted, and data submitted by commenters concerning the benefits of joint station ownership. We conclude that the public interest would best be served by facilitating waivers of the rule under certain circumstances, particularly for combinations located in markets with many competing voices or involving "failed" stations. We believe that this modest new policy sufficiently meets the needs of the present while permitting us over time to assess the general ramifications of modifying the rule. Furthermore, this incremental approach best serves the public interest and best achieves our continuing goals of encouraging diversity and competition because it takes into account the fact that at some point the benefits of allowing combined station operations may outweigh the costs of relaxing such ownership restrictions with respect to our traditional diversity and competition goals.

3. The *Notice of Proposed Rule Making* in this proceeding (*Notice*),[2] released on February 20, 1987, set forth several rather narrow proposals for relaxing two local ownership rules. The first proposal, to modify the radio

"duopoly" rule to allow a greater degree of overlap between station contours, was recently adopted in the *First Report and Order* in this proceeding. [3] Specifically, we relaxed the radio "duopoly" rule to a principal-city contour standard (the 5 mV/m standard for AM stations and 3.16 mV/m standard for FM stations). Second, the *Notice* proposed relaxing the radio-TV cross-ownership rule to allow the common ownership of certain radio-TV combinations.

4. As we stated in the *First Report and Order*, more than fifty parties filed comments and reply comments in response to the *Notice*. Although four commenters opposed the proposed modifications to the radio-TV cross-ownership rule,[4] the overwhelming majority of commenters provided strong support for relaxing the rule. In fact, many commenters supported complete elimination of both rules, despite the fact that such an approach was not among the options set forth in the *Notice*. Having carefully reviewed all of these comments, which are summarized in Part One, we find that the current radio-TV cross-ownership rule should be relaxed to a limited degree. However, we have decided not to pursue our original proposal to eliminate the rule partially for all or most AM radio-TV combinations. Instead, we are adopting a new, more relaxed case-by-case waiver policy for all potential radio-TV combinations under which we will look favorably upon waiver requests that meet either of two standards set forth below and review all other applications based on the public interest criteria specified herein. This decision reflects our desire to act cautiously to weigh the benefits and costs of proposed mergers and to continue to obtain evidence concerning the ramifications of modifying this long-standing rule.

BACKGROUND

5. Six years after the fixed overlap standard of the "duopoly" rule was adopted in 1964, the Commission promulgated its "one-to-a-market" or radio-TV cross-ownership rule.[5] In essence, the rule prohibits a party from owning a commercial radio station (or an AM-FM combination) and a commercial television station in the same market. The rule accomplishes this goal by prohibiting the common ownership of radio and TV stations if the 2 mV/m groundwave contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station, or, conversely, if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station. However, in order to foster the development of UHF television, the Commission also created an exception to the rule under which proposed combinations of radio and UHF television stations in any given market would be considered on a case-by-case basis to determine whether common ownership of such stations would be in the public interest.[6] As a result, combinations of radio and UHF TV stations have been permitted in markets for a variety of reasons. For example, in many cases we have relied upon economic showings that revenues from a commonly-owned AM or FM station are necessary to support a UHF station or that cost savings from joint radio/UHF TV operations would help a UHF station to survive.[7] In addition, we have permitted these combinations where this joint ownership would result in the activation of an unused TV allocation and/or would result in a first or second TV station in a community or market.[8]

6. Based on our experience in implementing this rule and the record in this proceeding, we have decided to liberalize the cross-ownership prohibition to a modest degree by adopting a policy regarding waivers of the rule on a case-by-case basis for proposed radio-TV combinations if certain specified factors are met. This relaxed standard is discussed in more detail in Part Two, *infra*.

DISCUSSION

7. Our discussion is divided into two parts. In Part One we will address the basic policy concerns underlying the radio-TV cross-ownership rule. Specifically, we will discuss the substantial growth in local media markets and the effects that this growth has had on economic competition and viewpoint diversity throughout different sized local markets. We will also consider the costs and benefits of modifying the radio-TV cross-ownership rule, including three important types of benefits resulting from the group ownership of stations on a local level -- economic efficiencies and cost savings resulting therefrom, service benefits to the public, and programming benefits. In Part Two we will apply these general considerations to the radio-TV cross-ownership rule to determine whether we should adopt a new policy for waivers of the rule on a case-by-case basis.

PART ONE -- POLICY CONCERNS UNDERLYING THE LOCAL OWNERSHIP RULES

8. In view of the record in this proceeding and the overwhelming support of the comments received, we conclude that the prohibition against common ownership of radio and TV stations in the same market should be liberalized by the adoption of a new waiver policy. We believe that this action reflects the substantial growth and availability of media outlets in local markets, as well as the significant efficiencies and public service benefits that can be obtained from joint ownership. This approach sufficiently meets the needs of the present while permitting us to take a second look to ensure that any further modification or elimination of this rule is fully warranted. The following section discusses our specific findings in this proceeding in light of our traditional diversity and competition concerns, including the costs of this approach, and the subsequent section describes the substantial benefits resulting from joint station ownership.

I. Viewpoint Diversity and Economic Competition Concerns

9. As we stated in the *Notice* in this proceeding, the *ultimate* objective of the radio-television cross-ownership rule is to enhance consumer welfare through the promotion of economic competition and diversity of programming and viewpoints. Although we have found that diversity of *ownership* on either the local or national level is a means to achieve these goals, we continue to recognize that economic competition and diversity of programming and viewpoints are not the only goals, and diversity of ownership is not the only consideration, in the licensing of broadcast stations in the public interest.[9] Particularly in light of the substantial growth in media outlets

over recent years, the Commission has found in certain circumstances that the benefits of relaxing various ownership rules far outweigh any minimal impact on the number of separate voices in a market. For example, we have allowed some multiple ownership of stations on the local, regional, and national levels in recognition of the demonstrable benefits resulting from the joint ownership of stations, such as improving the quality and nature of programming, promoting the development of new broadcast services, and enabling marginal stations to remain on the air.[10]

10. The commenters in this proceeding have provided a great deal of evidence concerning the explosive growth in the number of media outlets, including the effect of this growth on our diversity and competition concerns, as well as data regarding the specific financial and other benefits resulting from group ownership on a local level. The following sections discuss these findings in greater detail.

A. Availability of Media Outlets

11. As reflected in the *First Report and Order* in this proceeding, significant growth has occurred in both the traditional broadcast services and alternative media delivery systems since the local ownership rules were adopted. For example, from the adoption of the radio-TV cross-ownership rule in 1970 to the present, the total number of AM, FM, and television stations has increased by 50.2%.[11] In addition, the number of TV stations grew by 73%, as the UHF television service matured and became profitable during this period.[12]

12. Likewise, there has been a substantial increase in the availability of alternative media delivery systems during this time, which has added to viewpoint diversity and has stimulated economic competition in the marketplace. From 1970 to the present, the number of cable television systems has more than tripled, and the number of subscribers has expanded almost tenfold.[13] Similarly, there has been a rapid and widespread acceptance of VCR's, which were virtually nonexistent in 1970. The number of television households with VCR's jumped from 40.4 million in 1987 to 48.63 million in 1988, an increase of more than 20% in just one year.[14] The number of subscribers to satellite master antenna systems, multipoint distribution systems and multichannel MDS systems has also increased rapidly, and the print media have also continued to make important contributions to viewpoint diversity and provide further economic competition in local markets.[15] However, our findings in this proceeding are based primarily on the increased availability of traditional broadcast outlets in local markets, as discussed further below.

13. *Local Media Outlets.* In the past 18 years, the number of broadcast outlets at the *local* level has increased dramatically throughout different sized media markets – large, medium, and small. We noted in the *First Report and Order* that many commenters provided statistics on the number of media outlets available in selected television and radio markets,[16] and others compiled data on the number of media outlets in more broad-based categories of markets, such as the top twenty, fifty, and seventy-five television markets.[17]

14. Specifically, as reported in the *First Report and Order*, NAB's study of the number of media outlets in all 209 television markets[18] reveals the significant number of media outlets in local markets of all sizes. First, the top 25 markets average 13.4 over-the-air television signals, 29.8 commercial AM stations, 29.2 commercial FM stations, 41.9 programmed cable channels in use with a 44% penetration rate, 2.8 locally published or significantly-read newspapers, 12 significantly-read magazines, and a VCR penetration rate of 54.1.[19] Second, there are still many outlets even in the smallest markets. For example, the smallest markets (201-209) have about nine radio and television outlets.[20] Third, because of cable penetration, even in the smallest markets, viewers have access to an average of over 20 cable channels. Fourth, the VCR penetration rate, outside the top 25 markets, is about 42% averaged over the other market groups.[21] Finally, although the number of significantly-read daily newspapers declines from an average of 2.8 dailies in the top 25 markets to 0.7 in markets 201-209, the average number of significantly read magazines remains relatively constant at about 11 for each market group.[22]

B. Viewpoint Diversity

15. It is important to realize that we are retaining our traditional concern for encouraging diversity of programming and viewpoints in this proceeding. The following section reviews the diversity rationale behind the radio-TV cross-ownership rule and examines the impact of increased media outlet availability on our traditional concern for viewpoint diversity.

16. *Diversity Goal.* One of the structural purposes underlying all of our multiple ownership rules is to encourage diversity in the ownership of broadcast stations so as to foster viewpoint diversity. As we stated when the radio-TV cross-ownership rule was adopted in 1970, this goal is based on the belief that the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[23] At the same time, we note that diversity of ownership *per se* is not an end in itself. Rather, the Commission has encouraged diversity of ownership simply as a means to achieve the public interest goal of promoting diversity of viewpoints.

17. In addition, both the Commission and the courts have recognized that pursuing ownership or viewpoint diversity is not the only consideration in licensing broadcast stations. For example, in comparative hearings among mutually exclusive applicants for new broadcast stations, we accord great importance to the goal of promoting diversification of ownership, but we also consider other, sometimes potentially conflicting, factors that are intended to ensure "the best practicable service to the public."[24] Likewise, in the Rule Making context, we have concluded that pursuing maximum ownership diversity *per se* is not always in the public interest. For example, when we adopted the radio-TV cross-ownership rule, we did not require divestiture of existing combinations because the policy of promoting ownership diversity must sometimes give way to a policy of avoiding undue disruption of existing service. Therefore, although pursuing diversity of viewpoints and programming within individual markets is a key goal of our local ownership rules, it must be remembered that it is always balanced with other public interest objectives. And indeed, as we discuss further below, our concern about the impact on diversity of a proposed merger between a radio and TV station in the same market will be far different in a market with only three or four licensees than in a market with 50 or 60 licensees.

18. Moreover, the joint ownership of two or more media outlets in the same market does not necessarily lead to a commonality of viewpoints by those outlets. Commenters in this proceeding have indicated that group owners of broadcast stations, even in the same market, do not necessarily have a "monolithic viewpoint" at all of their stations. For example, CBS states "that in 45% of the instances in which CBS-owned television and radio stations in the same market made endorsements in electoral races from 1980 to 1983, they endorsed opposing candidates."[25] CBS adds that these opposing endorsements have occurred in "key political races such as the Washington-Byrne-Daley mayoral primary in Chicago in 1983, the Deukmejian-Bradley gubernatorial race in California in 1982, and the Cuomo-Koch gubernatorial primary in New York in 1982."[26] In addition, CBS-owned stations in the same market have taken different editorial positions on significant issues such as prayer in the public schools and abortion. Similarly, NBC states that, even among its stations located in the same market, editorial and programming decisions are made independently from other NBC-owned stations, resulting in its commonly owned stations making different editorial or programming decisions.[27] Accordingly, we conclude that relaxing the cross-ownership rule should not significantly affect diversity of viewpoints and should further programming and other public interest goals, as we discuss *infra*.

19. *Effect of Increased Outlet Availability*. Having carefully reviewed the data submitted in this proceeding on the availability of media outlets in local television markets, we find that there has been a dramatic increase in the number of media outlets in markets of all sizes, which has enhanced both viewpoint and programming diversity on a local level. In large markets, the degree of diversity is tremendous. For example, according to NAB's Media Outlet Study, within the number one ranked DMA -- New York City -- in 1987 there were 19 television stations, an average of 41.6 programmed cable channels in use (depending on location) with a cable penetration rate of 41.6%, and 99 commercial radio stations. There were also 41 total newspapers available, including 5 significant newspapers with circulation in excess of 5% of total television households, 10 significant magazines, and a VCR penetration rate of 58.2%.[28] Moreover, even using the smaller market definition of Metropolitan Statistical Area (MSA) radio markets, in 1987 there were 47 commercial radio stations in the New York MSA, of which 25 are AM and 22 are FM.[29] These numbers do not even include non-commercial educational FM stations within the New York market or other radio and television stations which operate outside of the New York radio/TV market but which actually provide service to portions of the market.

20. As one would expect, the degree of diversity in other large markets is less than in New York but is still quite large. For example, in the 25th ranked DMA -- Portland, Oregon -- there are 7 television stations, 40 commercial radio stations, an average of 40.5 cable channels in use (depending on location) with a cable penetration of 48.9%, 6 newspapers, 5 significant newspapers, 13 significant magazines, and a VCR penetration of 47.5%. Moreover, this high level of diversity does not drop off after the 25th market or even at the 50th market. Indeed, as Jet Broadcasting observes, "[w]hile it is true that the number of radio and TV stations are roughly proportional to market size, markets below the first 50 to around the 150-ranked area tend to be intensely competitive with a substantial variety of viewpoints."[30] For example, Jet uses market #138 -- Erie, Pennsylvania -- as support for this proposition. According to Jet, Erie has 5 TV stations (including one non- commercial station), an average of 40 cable channels with a cable penetration of 51.3%, and 12 radio stations within the Erie metro area (one of which is a noncommercial station). Moreover, Jet states that two additional FM allocations have been made in the Erie area due to Docket 80-90; and, within the three-county Erie TV ADI, there are 7 more radio stations.

21. In light of these findings, we believe that our diversity concerns have become somewhat attenuated since the radio-TV cross-ownership rule was adopted in 1970, especially in markets with many separate licensees, and thus may be outweighed by benefits that could be achieved by modifying the current rule. As we stated in the *Notice*, in a market with 50 media voices, a 51st voice may increase viewpoint diversity to some degree. However, a broadcaster who seeks to operate a second station in the market may, because of economies of scale and cost savings inherent in radio-television combinations in the same market, produce or purchase more informational programming than would two separate stations. Thus, as the number of voices increases, we believe it is appropriate to balance the benefits of an additional voice against the benefits of the efficiencies from allowing certain radio-TV combinations.

22. *Opposition Comments*. As noted in the *First Report and Order*, three commenters, CFA, UCC, and NBMC, have questioned our legal authority to change the local ownership rules on the grounds that such a change would be inconsistent with recent precedent and policy statements concerning our diversity goal. Specifically, these commenters observe that we relied heavily on the existence of the local ownership restrictions in eliminating the regional concentration rule and relaxing the national multiple ownership restrictions. The limited action that we are taking in this proceeding, however, retains the current radio-TV cross-ownership rule in full effect. Indeed, in an abundance of caution, we have decided to relax only our cross-ownership waiver policy in order to look favorably upon certain radio-TV combinations.[31] The restrictions on multiple ownership at the local level remain substantial.

23. Two commenters in this proceeding have also claimed that this diversification policy was established to maximize "the number of voices on the air" or editorial viewpoints, and that we have mischaracterized this objective in our *Notice* as the promotion of diversity of programming.[32] Those arguments misrepresent our position, however, because we continue to recognize the importance of viewpoint diversity. Indeed, the minor change that we are making does not significantly affect that diversity goal. Instead, we have found that in some circumstances, the benefits of allowing joint radio-TV operations may outweigh the "costs" to diversity of ownership or viewpoints from permitting such combinations.[33]

24. In this regard, we note that two commenters argued that the Commission adopted the radio-TV cross-ownership rule in 1970 after considering evidence of the large number of media outlets and the benefits of multiple station ownership similar to that submitted in this proceeding.[34] Even though the Commission's adoption of the rule may have been based upon valid policy decisions in 1970, we must conclude that circumstances have changed substantially in the eighteen years since then. As discussed

in Section A, *supra*, today there are many more outlets for information and viewpoints throughout all types of markets than there were in 1970.[35] Furthermore, the commenters in this proceeding submitted a substantial amount of evidence concerning the benefits of joint radio-TV operations, discussed *infra* in Section II.

C. Economic Competition

25. We have also considered the effect that this increased media outlet availability has had on the radio-TV cross-ownership rule's complementary goal of promoting economic competition among media outlets in order to encourage the efficient provision of broadcast services, specifically focusing on whether, in local markets of varying sizes, relaxing the radio-TV cross-ownership rule would significantly reduce the benefits from competition now being achieved. This section discusses the competition rationale underlying the local ownership rules and our findings concerning the extent of competition in local television markets.

26. As we discuss in further detail below, it is axiomatic that the degree of competition always increases somewhat when new competitors enter a market and conversely diminishes whenever the number of competitors diminishes due to merger or bankruptcy. However, many studies have suggested that unconcentrated markets with a number of firms will tend to operate quite competitively.[36] In that case, additional competitors in such already competitive markets are likely to have relatively little impact on the degree of competition. Indeed, there is economic evidence indicating that after a certain number of competitors enter a market, additional competitors have a relatively small effect on the degree of competition.[37] This implies that mergers which reduce the number of competitors in markets with many firms will have little impact on the degree of competition. For that reason, in a market with many separate owners, a number of mergers can take place without any measurable anticompetitive consequences. In addition, the empirical studies which have looked at the impact of joint station ownership are generally inconclusive or do not find any convincing evidence that such ownership creates market power.[38]

27. *Competition Goal.* As we stated in our *First Report and Order*, besides promoting diversity of viewpoint, the local ownership rules also seek to prevent undue concentration of economic power contrary to the public interest. Our concerns in this area were not based upon any evidence that group ownership would necessarily lead to anticompetitive practices in local markets but, rather, upon the *potential* for such practices to occur.[39] Indeed, in enacting the radio-TV cross-ownership rule, the Commission found that "[o]n an overall basis, there has been no showing that single stations cannot compete effectively with combination owners."[40] Nevertheless, the Commission concluded in both the radio "duopoly" and in the radio-television cross-ownership rule makings that it was not necessary to find specific evidence of anticompetitive abuses in order to adopt local ownership restrictions and that, on balance, at that time, the public interest would be served by adopting the rules in question.

28. *Effect of Increased Outlet Availability.* After reviewing the various studies and data submitted on economic concentration throughout television markets of different sizes, as described below, we conclude that the increased availability of media outlets has substantially reduced the risk that relaxing the radio-TV cross-ownership rule will significantly decrease the level of competition in local markets.

29. The most extensive study on the competitive effect of allowing joint ownership of radio and television stations in various types of markets was done by CBS, based on the Department of Justice (DOJ) *Merger Guidelines*. Specifically, CBS first calculated the Herfindahl-Hirschmann Index (HHI)[41] values for the top 20 markets under present market conditions.[42] Because advertising revenues were not available, CBS used audience shares from the November, 1986 sweeps rating period as a substitute.

30. The results of this study reveal that, at the present time, the top 20 markets are largely unconcentrated under DOJ's *Merger Guidelines*. In doing these calculations, CBS took into account the fact that in 15 of those markets there were a total of 35 cross-ownership combinations of TV and radio stations. This means that there were 35 instances in which a radio and TV station were attributed to the same owner, and the audience reached by the stations in an average quarter was added together. According to CBS, the HHI figures for 15 of the markets are below 1,000 and are, therefore, considered "unconcentrated." Of the remaining five markets, all have HHI's on the low end of the "moderately concentrated" category, with three of these markets having HHI's which are below 1,100.[43]

31. However, because one of the principal purposes of the *Merger Guidelines* is to determine post-merger HHI's, CBS undertook a further analysis of the effect on market concentration if the radio-television cross-ownership rule were relaxed. In particular, CBS hypothesized a "worst case" scenario in which the non-commonly owned television network affiliates were to merge with the leading radio stations in each of the top 20 markets. If this were to happen, then 37 mergers would occur. CBS then calculated post-merger HHI's for each of these markets.

32. Based on the results, antitrust concerns would not likely be raised in these markets. Specifically, after the hypothethical mergers, the HHI's would be under 1,000 in 11 markets, indicating that these markets are still "unconcentrated". Furthermore, even though the post-merger HHI's in the remaining 9 markets range from 1,000 to 1,415, mergers would most likely not be challenged by DOJ because the incremental HHI increase would be less than 100 in eight of these nine markets.[44] Even in the remaining market -- Pittsburgh -- the HHI increase was only 103 points and was due to the hypothetical merger of the number one radio station and the CBS TV affiliate; however, if the CBS affiliate were to merge with any other radio station, the HHI would increase by less than 100 points. Moreover, even in cases where the incremental HHI increase is over 100, DOJ would still evaluate on a case-by-case basis the relative merits of the proposed merger and would take into account other factors, including the efficiencies from joint ownership.

33. Similarly, NBC examined three major markets -- New York, Chicago, and Washington, D.C. -- to determine the effect on market concentration if the most-watched television station and the most-listened to AM and FM radio stations were to merge. Specifically, based upon the audience shares of these stations and the available data on the total advertising revenues in each of these markets for radio and television stations in 1987,

NBC estimated the share of the total broadcast advertising revenues that each of these leading stations has in its respective market. Based upon this analysis, NBC determined that the leading television stations in each of these markets did not have large enough shares of the total broadcast advertising revenues to exercise undue control of the market. Indeed, the shares of these TV stations ranged from 15.46% to 18.56%.

34. Moreover, NBC concluded that even if the leading TV stations and the leading AM and FM stations merged in each market, this would increase the TV stations' share of their respective markets by only 2 to 6 percentage points, depending upon the market.[45] Consequently, NBC believes that, even under this worst case scenario, these hypothetical mergers would not result in an undue concentration of economic power in these major markets.

35. In this regard, it is also worth noting that on a nationwide basis, audience share of the three major TV networks has been declining, while the audience share of independent TV stations and cable TV networks has been rising. For example, the prime time audience share of the three major TV networks declined from 91% in 1977 to 67% in 1987.[46] This trend will likely continue, which implies that in the future mergers between the top radio and TV stations in individual markets should have an even smaller impact on the share of all TV viewing audience controlled by individual group-owners and thus on the overall level of competition in the TV advertising market.

36. Based on these studies, we conclude that the increased availability of broadcast outlets in large local markets has reduced the potential risk of harm to competition that would be caused by relaxing or modifying the radio-television cross-ownership rule in such markets. The CBS and NBC studies referred to the largest TV markets, where there are a great number of competing radio and TV outlets. Many commenters in this proceeding believe that the same conclusion can be reached in other categories of markets, such as the top 50 or 75 markets,[47] and some parties believe that the increased availability of media outlets justifies eliminating the rule in all TV markets. After reviewing all of the evidence, however, we have decided to retain the existing radio-TV cross-ownership rule, but to adopt a policy regarding waivers of the rule for proposed combinations under certain circumstances. Our rationale for adopting this approach rather than an across-the-board relaxation is discussed in Part Two, *infra*.

37. With respect to broadcast competition in general, it is also important to remember that no rules similar to the broadcasting "one-to-a-market" rules apply to cable TV systems. In particular, there are no Commission restrictions on the right of cable systems to own one or more AM or FM radio stations that serve the same communities as the cable system. Given the Commission's desire to continue to encourage the provision of over-the-air advertiser-supported and noncommercial television for which consumers pay no direct charge, we believe it would be anomalous to absolutely forbid common ownership of radio stations in the same market by television stations providing "free" service to consumers but to allow cable systems which charge for cable subscription to own local radio stations. Such an inequitable treatment would tend, through government regulation rather than competitive business activity, to improve the competitive position of cable systems relative to broadcasting systems. As we stated in our recent Syndicated Exclusivity *Report and Order*, "In fulfulling our responsibility under Sections 301, 307(b), and 309, we believe the public interest requires that free, local, over-the-air broadcasting be given full opportunity to meet its public interest obligations. An essential element of this responsibility is to create a local television market that allows local broadcasters to compete fully and fairly with other marketplace participants. . . Our regulatory scheme should not be structured so as to impair a local broadcaster's ability to compete, thereby hindering its ability to serve its community of license." *Report and Order* in Gen. Docket No. 87-24, 3 FCC Rcd 5299, 5311 (1988).

II. Benefits From Joint Ownership of Stations in the Same Market

38. Most significantly, as previously discussed in the *First Report and Order*, we have found that the common ownership of broadcast stations in the same market results in many public interest or consumer welfare benefits. We have divided our discussion of these benefits into three main categories. First, we will examine the economies of scale and efficiencies inherent in the ownership and operation of radio-television combinations in the same market and the actual cost savings resulting therefrom. Second, we will review the data submitted on the programming benefits to the public resulting from the common ownership of broadcast stations in the same market. Third, we will address how joint ownership of broadcast stations in the same market produces other potential service benefits such as the activation of unused channels or the improvement of the facilities of existing stations.

A. Efficiency Benefits

39. The record in this proceeding reveals that there are significant efficiencies inherent in the joint ownership and operation of radio and television stations in the same market which in turn lead to cost savings. These savings can lead to programming and other service benefits, as outlined in Sections B and C *infra*, thus enhancing consumer welfare and the public interest. Many of the commenters have drawn upon their experience in operating radio-television combinations in the same market which were either grandfathered under our rules or authorized pursuant to the grant of waiver requests. They have identified essentially six areas in which radio-television combinations produce efficiencies, as set forth below.

40. Foremost among these efficiencies is the ability to co-locate the studio and office facilities of radio and television stations in the same building, thus obviating the need to own or rent two separate buildings.[48] As a result of having co-located physical facilities, many owners of radio-television combinations also reported the sharing of studio facilities and equipment. For example, a television station may use the audio facilities of a co-owned radio station for producing commercials; likewise, a commonly owned radio station may use the studio of its sister television station for programs involving group interaction. Moreover, many commenters indicated that whenever FM and TV stations are jointly owned in the same market, their transmitting antennas would typically be located on the same tower and the transmitter building would be shared, thereby reducing station costs.

41. A second type of efficiency results from the sharing of the administrative and technical staffs of the commonly owned radio and television stations.[49] Most typically, ra-

dio-television combinations share staffs from the accounting and bookkeeping departments and thereby consolidate payroll, billing, and accounting operations under the direction of a single business manager or controller. Indeed, many commenters indicated that this is the easiest way to consolidate radio-TV station operations and that this produces significant economies of operation. To a lesser extent, other administrative and technical employees are shared. For example, commonly owned radio and television stations may share a chief engineer as well as other technical personnel, especially in smaller markets.

42. Another area in which radio-TV combinations realize efficiencies is from the sharing of professional services such as attorneys, accountants, financial institutions, and insurance carriers. Such services are typically obtained at the corporate level by the joint owner, resulting in lower costs than if the services were purchased separately by the radio and television stations.

43. Fourth, jointly owned radio and television stations may take advantage of efficiencies in advertising and promotion. Most notably, such stations may cross-promote each other, which has the beneficial effect of attracting both audiences and advertisers. Indeed, according to a survey of 35 senior executives of existing radio-television combinations conducted on behalf of NAB, this was considered to be one of the most significant benefits of the joint ownership of radio and television stations in the same market.[50] In addition, many commenters reported that commonly owned radio and television stations may jointly sponsor community events or participate in combined public service campaigns.

44. A fifth potential area of efficiencies involves news gathering operations. In this regard, we note that, of the 35 radio-television combinations surveyed by NAB, very few have combined news staffs. However, they typically share wire and news services, which reduces their costs. Moreover, as Gillett Holdings, Inc. points out, television stations typically produce more news stories than they can air, thereby enabling their co-owned radio stations to air the audio portions of unused news stories.[51] This may be especially beneficial to AM broadcasting stations, many of which have experienced declining revenues and ratings. Furthermore, radio and TV stations will typically share news tips.

45. Finally, radio and television stations could potentially take advantage of efficiencies in their sales departments. However, we note that many radio-TV combinations apparently maintain separate sales staffs because of the apparent differences in the advertisers who utilize radio and television. Nevertheless, radio and TV stations will frequently share sales leads and may share a single sales representative for soliciting national or regional spot advertising.

46. Having identified six types of efficiencies which are inherent or potentially inherent in the joint operation of radio and television stations in the same market, we next consider the specific cost savings that may be generated by these efficiencies. The most extensive data on this issue were contained in a study submitted by NAB.[52] Based upon financial data for the year 1985 submitted to NAB, the study compared the financial performance, staffing levels, and sales efficiencies of radio stations operating with television stations and comparable stand-alone radio stations in the same or similar markets. Specifically, the study compared a representative sample of 11 AM stations, 5 FM stations, and 30 AM-FM combinations -- all of which were jointly operated with television stations in the same market -- and a like number of stand-alone AM stations, FM stations, and AM-FM combinations. The samples included a cross-section of stations, reflecting different market sizes, radio formats, and group and independently owned stations.[53]

47. Several inferences may be drawn from this study. First, based upon the sample of the stations considered, an AM or FM station operated jointly with a television station may be more profitable than a stand-alone radio station. Specifically, the average "return on revenue" or profitability of the AM or FM stations operated with television stations in the same market appeared to be significantly higher than those of the stand-alone radio stations.[54] In addition, the study found that, although AM-FM combinations operated with or without television stations in the same market were profitable, the latter category had a 5% higher return on revenue than the former. This may be due to special efficiencies inherent in radio-radio combinations themselves.

48. Second, stand-alone radio stations apparently spend a greater proportion of their budgets -- from 28% to 46% more -- on general and administrative expenses than do radio stations co-owned with TV stations.[55] As a result, these stand-alone radio stations may have less money to spend on other expenses such as programming and news than radio stations jointly owned with TV stations. As described earlier, this latter category of stations may realize significant cost savings by consolidating general and administrative functions like payroll and billing and investing these cost savings into other areas.

49. Third, the study found that radio stations operating in conjunction with a TV station generally have larger staffs than do the stand-alone radio stations, but that the staffs are used more efficiently. Indeed, the average revenue per employee for the radio stations jointly owned with TV stations were almost double that of the stand-alone radio stations.

50. Finally, there appeared to be greater sales efficiencies at the radio stations co-owned with TV stations than at the stand-alone radio stations. In this regard, the study revealed that the selling effort, as measured by sales costs as a percentage of total advertising revenues, was 47% more efficient at an AM station operating with a TV station and 22% more efficient at an FM station operating with a TV station than at comparable stand-alone radio stations.[56]

51. This study suggests that there are significant efficiencies that can result from owning and operating radio and television stations in the same market. We recognize that NAB's study may somewhat overestimate these efficiences because it is comparing averages of financial performances of different stations in the same or similar markets, apparently without controlling for other factors, such as station size, that may contribute to these different performances. Nevertheless, we still believe that this study, as well as the observations and experiences of those broadcasters who have operated radio-TV combinations, suggests that there are efficiencies and related cost savings inherent in owning radio and television stations in the same market and that this is a valid factor to consider in this proceeding.

52. *Opposition Comments.* There were some commenters in this proceeding who asserted that our statements in the *Notice* concerning the benefits of joint ownership were purely speculative and without founda-

tion.[57] For example, Jacor Communications questioned whether economies of scale in fact result from combined radio-radio and radio-television operations, and suggested that our statements in the *Notice* to this effect were rather tentative. In addition, UCC contended that VHF TV stations and AM radio stations are "two wholly different animals," with completely divergent approaches to news and informational programming. Therefore, they argued that the current "waiver" approach is most appropriate, permitting joint ownership only in certain narrow circumstances within our discretion.

53. We disagree. As we stated in the *First Report and Order*, we find that the record in this proceeding more than dispels any doubts concerning the benefits of common ownership, particularly as to the efficiencies inherent in combined station operation. For example, Gillett Holdings has shown that, contrary to UCC's assertions, AM radio is well situated to benefit from the economies of scale and other efficiencies generated by joint radio-TV ownership, particularly in the area of radio news.[58] Under joint ownership, an AM station would gain access to the TV station's large news-gathering operation, while the TV station would benefit by gaining an additional outlet for its news-gathering efforts, thus spreading the cost of such operations over two facilities. Needless to say, the increasingly mobile public would also benefit by gaining broader access to the information gathered by the joint news operation, including the ability to listen to the news when they cannot physically stop to view a television set. The opposition comments failed to refute these and the other findings of the studies outlined above, and offered no contradictory evidence of their own on these points. Therefore, we remain unconvinced by their unsupported arguments. However, we have nevertheless determined that a cautious approach is appropriate in relaxing the radio-TV cross-ownership rule for the reasons set forth below. The limited refinements we are making to the rule will enable the public and broadcasters to take advantage of the benefits of joint ownership, where appropriate, while retaining the substance of the current rule.

B. Programming Benefits

54. Besides producing the above-described efficiency benefits, the cost savings and aggregated resources of combined radio-television operations may also contribute to programming benefits to the extent that there may be more news, public affairs and other non-entertainment programming.

55. Of course, information on existing "group ownership" does *not* necessarily involve ownership in the same market. Nevertheless, data on existing patterns of group ownership provide useful information concerning the benefits of cross-ownership in the same market. This section focuses on the data submitted on this point. In essence, the commenters believe that group ownership will enhance programming diversity, especially with regard to the type of programming that the multiple ownership rules were intended to encourage – news, public affairs, and non-entertainment programming. In particular, they have identified three reasons why these benefits are likely to occur with respect to radio-television station combinations.

56. First, the record reveals that existing group-owned stations spend a larger percentage of their budgets on news and overall programming than independent stations. For example, NAB's study on cost savings resulting from combined radio-television operations revealed that, on the average, AM or FM stations jointly operated with a television station spent 36.2% and 21.6%, respectively, of their budgets on overall programming, while stand-alone AM or FM stations spent only 30.8% and 16.7% on programming. Similarly, the AM or FM stations that were co-owned with a TV station in the same market spent a significantly higher percentage of their budgets on news than did the stand- alone stations.[59] These results may well be due to the fact that these radio stations had smaller general and administrative expenses than the sum of those expenses for two stand-alone radio stations surveyed, enabling the former to divert cost savings into other areas such as programming or news.

57. Second, group-owned stations appear to air more informational programming than non-group-owned stations. In this regard, using the last published Commission report on television programming during a composite week,[60] NBC compared the average amount of time the NBC-owned television stations devoted to informational programming (*i.e.*, news and public affairs) and the average amount of time devoted to this type of programming by all television stations in the 25 largest markets during prime time and during the period 6 a.m. to 12 p.m. The study also made a similar comparison of the average amount of local news and public affairs programming done by the NBC television stations and the average offered by all television stations in the top 25 markets during these same time periods.

58. The results of the study indicated that in both time periods, the NBC television stations, on the average, aired more informational programming than did the average of all television stations in the largest 25 markets. The same result also occurred with respect to local news and public affairs.[61]

59. To put these results into perspective, we also compared the average amount of informational programming aired by the other two major commercial TV networks and three group owners and the average amount of such programming aired by television stations in the top 25 markets during the same period. In making this comparison, we utilized the same programming data that was used in NBC's study. Although the information is somewhat dated, nevertheless it represents the most recent programming data collected by the Commission and we believe that it provides additional useful information concerning the level of informational programming provided by various stations.

60. As a result of this analysis, we found that the average amount of informational programming aired by each of these group owners exceeded the average amount of such programming aired by all of the TV stations in the largest 25 markets in both time periods studied. Specifically, the results are as follows:

Average Percent of Time Devoted to Particular Program Types, 1979

	Average of TV Stations Top 25 Markets	ABC	CBS	Group W	Capital Cities	Cox
6AM - Midnight						
Total News and Public Affairs	14.3%	19.74%	19.24%	20.40%	18.23%	15.08%
Local News and Public Affairs	08.7	13.50	11.30	12.48	10.05	09.50
6PM - 11PM						
Total News and Public Affairs	15.1	25.04	25.42	25.51	20.43	20.34
Local News and Public Affairs	09.3	15.84	14.58	15.56	11.15	13.38

61. Recognizing, however, that the Commission no longer collects or publishes the programming data underlying this analysis, many commenters referred to other studies submitted within our national multiple ownership proceeding, which utilized more recent programming data. The most notable of these was a study submitted by NAB.[62] Therein, NAB surveyed the programming from the 1982-1983 television season of a representative sample of 107 group-owned and non-group-owned commercial television stations in 29 markets. Specifically, NAB compared the average amount of informational, local, and total non-entertainment programming broadcast by group-owned and non-group-owned stations. They found that the group-owned stations offered a greater percentage of each of these types of programming than the non-group-owned stations, lending further support to the proposition that group-owned stations actually enhance the availability of informational programming.[63]

62. *Opposition Comments*. Despite these specific findings, CFA has argued that there is no assurance that any cost savings attained through common ownership will be directed towards programming. Instead, CFA contends that such windfalls will be invested in non-programming endeavors, such as debt-financing or the purchase of more broadcast properties.[64] According to CFA, broadcasters have not reinvested the cost savings associated with deregulation into news and public affairs programming, citing 1985 and 1987 studies by the Radio and Television News Directors Association (RTNDA)[65] to demonstrate the "continuing drop in the number of full-time news personnel" and the reduction in informational programming.

63. To the extent that these RTNDA surveys are even relevant to the radio-TV cross-ownership rule,[66] however, our review of the same surveys reveals that those surveys showed that the Commission's deregulatory actions have *not* adversely affected the news or public affairs operations at most television stations. Specifically, the 1987 survey found that 83.4% and 81.7% of all television stations responding had experienced no changes in their news or public affairs operations, respectively. Indeed, many TV news directors stated that the Commission's elimination of the processing guidelines actually enabled them to do a better job in these areas because they did not feel constrained by any quantitative standard and, as a result, could allocate their resources in the best manner they saw fit. Although the 1987 RTNDA survey did reveal cutbacks and other negative effects for news at 4.9% of the responding stations, this appeared to be offset by positive changes, such as larger news staffs, at 3.8% of the stations. We remain convinced by the record in this proceeding that economic incentives induce the owners of two or more stations in the same market to offer varied programming of the type that our rules were designed to encourage. It is in the best interest of broadcasters to provide high quality programming because this leads to greater audience shares and higher returns.[67]

C. Other Service Benefits

64. Finally, the record reveals that there would also be other public service benefits resulting from relaxing our prohibition against the common ownership of radio and TV stations in addition to the programming benefits outlined above. These service benefits can generally be grouped into three categories, as set forth below.[68]

65. First, permitting combined radio-television operations in the same market may benefit the public by enabling struggling radio or television stations to continue to provide service to the public. This could occur because the superior resources of one station or the cost savings resulting from combined operations may contribute to the economic viability of a struggling station in the same or a different broadcast service, enabling the latter to stay on the air.[69] This may be especially true with respect to AM broadcast stations, which, as a whole, have been experiencing declining audience ratings and revenues in recent years as compared to FM stations.[70] For example, a marginal AM station could become stronger by merging with a profitable television station. The superior resources of the television station, as well as the efficiencies inherent in joint radio-TV operations, may well inure to the economic benefit of the AM station and ultimately to the public, which would continue to receive service by the AM station.

66. A second service benefit would be the possible activation of unused commercial UHF or VHF television or FM radio allocations, providing new broadcast service to the public. As we stated in the *First Report and Order*, many of these vacant allotments are located in small or rural markets. For example, there are approximately 103 vacant commercial UHF television allocations and 39 vacant commercial VHF television allocations. Of these vacant allocations, 75 of the UHF channels and 33 of the VHF channels are located in markets below the top 50 markets.[71] In such markets, activation of these allocations may not be possible absent the cost savings resulting from combined operations. Indeed, we have recognized this benefit in permitting the cross-ownership of radio and UHF TV stations in the same market.[72]

67. Third, the efficiencies and related cost savings in joint radio-television operations may also lead to improvement in the technical facilities of existing stations, such as

increasing a station's power. For example, many daytime-only AM stations could become fulltime stations if they had additional resources to purchase directional antennas and/or a new transmitter site.[73] This may have the beneficial effect of expanding a station's service to unserved or underserved areas or times of day, as well as improving the signal quality for those listeners or viewers who already receive service.

68. As the foregoing discussion indicates, commenters have provided us with a substantial record of the benefits of common ownership of broadcast stations in the same market. Consequently, we find that the record supports relaxing the radio-TV cross-ownership prohibition to adopt our new, more lenient waiver policy. In Part Two, we will describe this waiver policy and explain why we adopted this alternative rather than the other options considered.

PART TWO -- MODIFICATION OF THE RADIO - TV CROSS - OWNERSHIP RULE

69. Having discussed the record regarding changing the local ownership rules, we now will apply these general findings to the radio-television cross-ownership rule. The rule currently prohibits the common ownership of commercial radio and television stations in the same market if the 2 mV/m groundwave contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station or, conversely, if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station. In applying the general findings from Part One to the radio-TV cross-ownership rule, we find that the record shows that the public interest benefits of the rule in its current form have been reduced by the increased availability of media outlets, especially in markets with the largest number of owners or voices. We have also found that there would be significant efficiencies in station operations from relaxing this common ownership prohibition under certain circumstances. Consequently, in balancing our continuing desire to retain the public interest benefits from competition and diversity against the potential benefits from joint ownership of stations, we conclude that the public interest would be served by some modification of the present proscription on radio-TV cross-ownership.

70. After carefully evaluating all the possible options, we have decided to relax this rule rather narrowly by adopting a new case-by-case waiver policy.[74] In particular, we will look favorably upon waiver applications involving stations in those top 25 television markets where there will be 30 separate broadcast licensees after the combination; and in situations involving "failed" stations, as described further below. We anticipate that this approach will lead to a limited number of additional radio-television combinations within the same market, enabling us to obtain further evidence regarding the advantages and disadvantages of maintaining the cross-ownership rule. This section explains the new waiver standards in more detail and sets forth the rationale for adopting this approach rather than the other options considered.

71. In the course of deciding on this waiver approach, we gave careful consideration to the other options suggested by the commenters, namely: (1) eliminating the radio-TV cross-ownership rule completely in all television markets; (2) partially eliminating this rule for AM-TV combinations, (3) partially eliminating the rule in large markets; or (4) keeping the rule in its present form. A large number of commenters supported the first of these other options, to eliminate the radio-television cross-ownership rule completely in all markets.[75] Although this approach would give broadcasters the most flexibility in station acquisition and taking advantage of joint ownership efficiencies in all size markets, some commenters argued that this option would abandon our traditional method of safeguarding viewpoint diversity and economic competition.[76] In the interest of caution, we have decided not to eliminate the rule, but instead to adopt a new case-by-case waiver policy at this time in order to assess the effects of relaxing the one-to-a-market policy.

72. The second option we considered was to permit AM-VHF, AM-UHF, and AM-FM-UHF combinations in all television markets or, alternatively, to permit these combinations only in large markets and to entertain requests for such combinations in other markets on a case-by-case basis. The main advantage of this option, which was proposed in the *Notice* and supported by a number of commenters,[77] is that it could assist AM and UHF broadcasters, particularly by allowing AM broadcasters to merge with profitable television stations with greater financial resources.[78] However, we found that this option overemphasizes the possible adverse impact that local FM-VHF TV combinations would have on economic competition or viewpoint diversity relative to that of AM and UHF TV combinations and, in that sense, would unjustifiably prevent the public and broadcasters from taking advantage of the efficiencies inherent in joint FM-VHF TV operations.[79] The record does not provide a basis for concluding that it would be desirable to treat these stations differently in this way.

73. A third option considered, supported by a large group of commenters,[80] was to eliminate the radio-TV cross-ownership rule only in large markets, such as the top 20, 50, or 100 markets, and to allow radio-TV combinations on a case-by-case basis in all other markets. This approach, in some ways not unlike the waiver approach we are adopting today, would give broadcasters greater freedom in station acquisitions, and might not materially undermine our traditional policy concerns because there are a sufficient number of media outlets in large markets to prevent any outlet from obtaining undue economic power or undue sway over public opinion. However, some commenters suggested that the benefits of joint ownership are equally if not more attainable in small markets, and that carving out an exception to the rule based on an arbitrary cut-off point would unjustifiably deny these benefits to the public and broadcasters in smaller markets.[81] In an abundance of caution, we have decided that it would be preferable to review proposed radio-TV combinations on a case-by-case basis, even in large markets, in order to have a period of time in which to assess the ramifications of relaxing the radio-TV cross-ownership prohibition.

74. Finally, we considered the option of leaving the radio-TV cross-ownership rule in its present form, which was supported by four of the commenters. However, this option would retain an overly restrictive regulation on station ownership despite the strong record in this proceeding supporting some relaxation of the rule. In particular, this option would fail to recognize the substantial

growth in media outlets in markets of all sizes and the significant public interest benefits of joint station ownership.

I. Top 25 Markets and Failed Station Waiver Standards

75. Having reviewed the various options outlined above, we have determined that the public interest would best be served at this time by retaining the radio-TV cross-ownership rule while adopting a case-by-case waiver policy under which we would look with favor upon certain waiver requests when the criteria described herein are met.[82] Under this approach, we will be predisposed towards waiver applications involving either the top 25 television markets or "failed" broadcast stations, as outlined in the next section. In situations where these two standards cannot be met, however, we will consider waiver applications on a more rigorous case-by-case basis, placing the burden on the waiver applicant to demonstrate that the purported benefits of the combination outweigh our traditional concerns for promoting diversity and competition. Recognizing the burdens that a general waiver approach imposes on petitioners in submitting waiver requests and on the agency in reviewing them, we have outlined specific criteria for the Commission's consideration in granting the particular waiver request.[83] This approach also permits us to evaluate each potential radio-TV combination using traditional antitrust and other factors to assess the impact on competition and viewpoint and programming diversity.

A. "Top 25 Markets/30 Voices" Standard

76. First, we will look favorably upon waiver requests when the radio and television stations involved are located in the top 25 ADI television markets as defined by Arbitron Ratings Company and in addition where, following the proposed combination, there will remain at least 30 separately owned, operated and controlled broadcast licensees or "voices". In determining the number of broadcast licensees in a particular market, we will count all full-power TV stations, both commercial and non-commercial, licensed to the relevant ADI television market[84] and operating AM and FM radio stations licensed to the relevant TV metropolitan market,[85] including any on-air stations operating under a construction permit.[86] In establishing this count, only primary authorizations will be assessed. Thus, for these purposes we will include satellite and non-commercial or educational stations, but not low power stations, translators, or class D FM stations. Furthermore, we will use the attribution provisions of our local ownership rules[87] to determine the number of separately owned, operated, and controlled broadcast licensees or voices in the relevant television or metro market.[88] An applicant requesting a waiver under this standard would be expected to provide documentation showing that this test has been met.[89]

77. We will be predisposed to grant waiver requests that meet this standard, and we generally do not intend to scrutinize these applications for economic efficiencies because we have already determined that such efficiencies generally exist and that the benefits of permitting radio-TV combinations in these markets with many competing voices will generally not undermine the benefits flowing from our traditional procompetitive and diversity policies. This conclusion is based on the fact that a very large number of broadcast outlets and separate voices will remain in these large markets, thereby preventing any single outlet or firm from obtaining undue economic power or undue sway over public opinion. Indeed, we believe that our "top 25 markets/30 voices" standard is conservative and may far exceed the market size and the number of voices necessary to ensure diversity and prevent competitive abuses.

78. *Rationale*. This waiver standard is a logical outgrowth of the number of stations/market size standard suggested in the *Notice*.[90] After reviewing the comments in this proceeding, we determined that permitting radio-TV combinations in the very largest or top 25 markets, on a case-by-case basis, would not significantly undermine our diversity and competition concerns while allowing the public and broadcasters to realize the benefits of common ownership. As noted earlier, a number of commenters in this proceeding proposed that we use a market size cut-off point in determining where to allow radio-TV combinations. For example, CBS proposed that we eliminate the ownership restriction in the largest markets, implying that they would include at least the top 20 markets.[91] Similarly, Group W and Capital Cities/ABC argued that we should eliminate the restrictions on radio-TV combinations in the largest 50 markets. In addition, we have used market definitions such as the top 50 or 100 markets in a number of our radio, television, and cable television rules.

79. We have struggled long and hard to determine what should be the appropriate market cut-off for this waiver standard. As reported in NAB's Media Outlet Study,[92] both the top 25 and top 50 markets contain a large number of media outlets, with an average of 72.4 broadcast outlets in markets 1-25 and 36.8 outlets in markets 25-50. While we have used the top 50 markets standard, as proposed by Capital Cities/ABC and Group W, in other rules,[93] we believe that we should take an extremely careful approach in liberalizing our radio-TV cross-ownership waiver policy. Therefore, out of an abundance of caution, we have decided to limit the markets in which we will look with favor upon waiver applications meeting the independent voices criteria to only the largest 25 markets.

80. There is a correlation between market rank and the number of stations or station owners, as reflected in the data outlined in Part One, *supra*. The largest markets tend to have the largest number of radio and TV stations and the largest number of distinct owners, whereas smaller markets tend to have fewer radio and TV stations and fewer separate owners. However, this correlation is not perfect. Some smaller markets may have more TV or radio stations or owners than markets ranked higher. In terms of both our diversity and competition concerns, the number of separate owners in the market may be the best measure of potential competition among stations and of the likelihood of diversity of editorial viewpoints and program formats. In addition, although we do not believe this is plausible or likely, it is possible that in a large market which presently contains more than 30 licensees, a series of mergers and bankruptcies might reduce the total number of voices to 30 or below. To guard against that possibility, and thus ensure that our general diversity goals are not compromised, we have decided to include the "30 voices" requirement in addition to our "top 25 markets" standard before we will look favorably upon proposed radio-TV combinations. We believe that using

the number of separate "voices" as an additional restriction or "floor" in applying this waiver standard best satisfies our public policy interests at this time.

81. Our "30 voices" standard parallels the recommendation of the National Telecommunications and Information Administration that we allow certain AM-TV combinations by using a benchmark that takes into consideration the number of independently owned stations in the market of the broadcast station to be acquired.[94] This standard is also somewhat similar to the approach suggested by NBC in its comments, which would permit cross-ownership in markets with 15 different owners of broadcast stations and daily newspapers *or* more than 30 radio and TV stations. According to NBC, such markets would be sufficiently diverse and competitive at the local level so that common ownership of radio and TV stations in these markets should raise no regulatory concerns.[95] We believe that NBC's suggestion to differentiate markets by at least the number of different media owners is a useful framework that addresses our concerns with respect to both economic competition and diversity. We also agree with NBC that different types of media, such as cable television, VCRs, SMATV, MMDS, newspapers and other print media, all provide sources of competition and media diversity for radio and TV stations. Nevertheless, in the interest of caution and because the radio-TV cross-ownership rule deals only with traditional broadcast outlets, we have decided to include only radio and TV stations in our standard for markets with many competing voices.[96]

82. After careful consideration, we have also decided not to use a market share measure or the HHI analysis in determining which markets appear to be competitive and which do not. First, we believe that the "top 25 markets/30 voices" standard represents a degree of competition sufficiently robust so that the markets involved would be unconcentrated or moderately concentrated, assuming that the HHI could be properly measured. More importantly, we believe that the numbers chosen are so clear and unambiguous that our own staff, waiver applicants, and other parties will be readily able to calculate and easily ascertain the results. In contrast, we fear that this would not be the case if we chose to use concentration measures because of the increased complexity of making and verifying the calculations. The administrative burdens of such an approach would be substantial for all parties concerned, and in light of the cautious approach taken herein, we see no need to impose such additional burdens.

83. We wish to reiterate that in adopting this new waiver standard, we are not abandoning our continuing concerns for encouraging diversity of voices and economic competition. Although liberalizing the radio-TV cross-ownership rule may affect diversity of ownership to some minimal degree even in markets with many separate licensees, we believe that any such effect must be weighed against the efficiency gains, cost savings and other benefits of allowing such combinations. To the extent that these goals may conflict to some extent, our decisions about when to allow joint ownership of radio and TV stations inevitably involve trade-offs and the weighing of costs and benefits. As the number of stations and separate owners increases within a market, the potential detriments from any individual radio and TV combination decline. Hence, the relative benefits tend to increase. It is our view that even below the top 25 markets or in a market with far fewer than 30 voices or owners, diversity and competition exist to such an extent that it is appropriate to take into account the efficiency and other benefits of allowing joint station operations. As described more fully below, in these markets we will examine waiver requests on a case-by-case basis to determine whether the benefits of joint operation outweigh the diversity costs. We believe, moreover, that our "top 25 markets/30 voices" standard is stringent enough to provide a "safety net" in terms of our fundamental diversity and competition concerns. That is, we are confident that where that standard is met, the potential benefits from joint ownership will generally outweigh any diversity gains from separate ownership.

84. We also note that this new waiver standard is even more limited and restrictive than it might at first appear. First, our determination that a television market has 30 or more voices will be based upon application of our attribution rules. Thus, if an individual owns even 5% in each of two different radio stations, then those stations will be considered commonly owned. Second, we will look separately at each waiver request to allow a merger of a radio and a TV station. Thus, in a market with 31 voices, we might approve the first merger request, which would decrease the number of voices to 30, but further mergers thereafter would be precluded under the "top 25 markets/30 voices" criteria. Third, the number of possible radio-TV mergers is limited by the number of TV stations in a market that are not presently jointly owned with a radio station.[97]

85. While we will be inclined to grant waivers that meet our "top 25 markets/30 voices" standard, we leave open the possibility that petitioners who submit petitions to deny might be able to rebut the request for a waiver. In addition, we will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and FM station within any single television metro area.

B. "Failed Station" Standard

86. A second situation in which we will be predisposed to grant applications will occur where waiving the rule would either: (a) allow a TV or radio station that has not been operating for a substantial period of time[98] to broadcast; or (b) allow a TV or radio station that is involved in voluntary or involuntary bankruptcy proceedings to continue to operate. In either of these situations, an applicant requesting a waiver of the rule would first be required to provide relevant documentation, *i.e.*, proof of the length of time that the station has been off-air, or proof that it is involved in bankruptcy proceedings.

87. *Rationale*. The rationale for this standard is similar to that of the current Note 4 exception to the radio-TV cross-ownership rule. Under this exception we have allowed certain radio-UHF combinations, primarily in cases of economic hardship or when joint ownership would result in activation of an unused TV allocation.[99] Under these circumstances, the benefits to the public of joint ownership outweigh any costs to diversity. The "failed" station standard we are adopting today is much more conservative, however, because only two specific conditions will satisfy this test.[100] Furthermore, we anticipate that petitioners who submit petitions to deny might be able to rebut the waiver request. In addition, as we noted in our discussion of the "top 25 markets/30 voices" standard, we will not grant any application if the proposed

combination would result in any one entity holding an attributable interest in more than one AM and one FM station within any single metro area.

88. We also anticipate that this strict standard, while difficult to meet, is one that can be easily documented by the waiver applicant and verified by our staff or other parties. This standard will thus impose few administrative burdens. In addition, we do not expect that any broadcaster would undergo the financial hardships of filing for bankruptcy or taking a station off the air for several months in order to qualify under this rather onerous standard.

89. We fully expect that preserving these bankrupt or inoperational stations through joint ownership will not adversely affect our diversity and competition concerns. Once a station has been off the air for a substantial period or has become involved in bankruptcy proceedings (so that it is likely to go off the air), competition or diversity in a particular local market cannot be improved by forbidding joint ownership of that station with another local station. In fact, dark or bankrupt stations actually disserve the diversity and competition goals of the radio-TV cross-ownership rule, because these stations are holding valuable frequencies without providing service to the public. Our assumption is that two healthy, commonly owned stations in a market clearly serve the public better than one operating station and one inoperational station or frequency providing no service to the public at all.

II. Case - by - Case Review

90. If a waiver request does not satisfy either of these two standards, then we will conduct a further, more rigorous review of the application to determine if the proposed combination serves the public interest based upon an evaluation and balancing of other specific factors, including the types of facilities involved, the potential benefits of the combination, the number of stations already owned by the applicant, the financial difficulties of the station(s), and the nature of the market[101] in light of our diversity and competition concerns. In looking at these various factors, we will balance them against our continuing goals of encouraging diversity of voices and economic competition. We also anticipate that these waiver applications will be subject to much closer scrutiny than was the case under the Note 4 radio-UHF exception to the radio-TV cross-ownership rule. The following section explains these factors in more detail.

91. First, in assessing the potential benefits of the combination, we will consider public service benefits such as the economies of scale, cost savings, and programming and service benefits discussed in Section II of Part One, *supra*. For example, some broadcasters in relatively small markets may be most able to take advantage of the economies of scale inherent in joint radio-TV operations, and could thus funnel their cost savings into better program service or technical facilities. However, applicants will face a heavy burden in relying on these benefits, because we will evaluate any potential benefits in the context of our other public interest criteria, particularly as to whether the combination would threaten our traditional diversity and competition concerns in the market.[102] We also expect applicants to outline these potential benefits with great specificity in their waiver requests. Second, with respect to the types of facilities involved, we will consider such factors as whether the proposed radio-TV combination involves a UHF or VHF TV station or an AM or FM radio station, as well as the size or the class of the stations involved. For example, combinations involving UHF TV, small AM, or class A FM stations may provide relatively greater public interest benefits and impose relatively fewer public interest costs.

92. Third, waiver requests forwarded by applicants who already own a number of media outlets in the relevant market will face a higher hurdle than those from applicants with few outlets. Moreover, as stated earlier, we will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and one FM station in the same metro area. Fourth, in reviewing the financial difficulties of any station(s), we will consider information related to whether a station has long been offered for sale, to no avail.[103] Finally, we will review the nature of the relevant market in light of our traditional diversity and competition concerns, especially with respect to the number of broadcast outlets and separate "voices" that would exist if the merger were approved, as well as the degree of cable penetration and the availability of other non-broadcast media. In this regard, proof of substantial cable penetration in the relevant market may enhance an applicant's waiver request.

93. In light of the burdens that a standard-less waiver approach can impose on both the petitioners and the agency, we have articulated criteria which the Commission intends to utilize in evaluating waiver requests not covered under the specific criteria of the "top 25 markets/30 voices" or "failed" station standards. We also note that this new waiver approach will replace the current radio-UHF exception in Note 4 of Section 73.3555, so that such combinations -- to the extent that they are not covered by the "top 25 markets/30 voices" or "failed" station standards -- will also be evaluated under the same criteria outlined above to determine whether common ownership of these stations would be in the public interest.[104]

94. *Rationale*. As stated previously, we believe that this case-by-case waiver approach for situations not meeting the two specific waiver standards promotes the public interest by allowing for the formation of some additional radio-TV combinations in certain cases while still retaining a rule that promotes our concerns for diversity and economic competition. The record shows that the number of media outlets, particularly TV and radio stations, are rising rapidly and that cable TV penetration and VCR ownership are similarly increasing in all markets. In addition, commenters have demonstrated the benefits of joint ownership, including cost savings and other efficiencies. In particular, the NAB study showed that real efficiencies can result from owning radio and TV stations in the same market, as discussed earlier.

95. Although a majority of commenters supported completely eliminating the radio-TV cross-ownership rule in all markets,[105] we have chosen to adopt a more limited approach for the following reasons. First, we find that this option ensures that our traditional policy goals are preserved as we continue to obtain further evidence regarding the need for the radio-TV cross-ownership rule. A few commenters, including CFA and Jacor Communications, argued that eliminating the rule will only help large conglomerates and could lead to dangerous concentrations of economic and political power in some markets.[106] Rather than modify or eliminate the rule, they suggested

that the Commission retain the current rule and its waiver approach, thus enabling the Commission to assess the merits of each proposed combination on a case-by-case basis. In response, we acknowledge that inasmuch as the effects of cross-ownership can best be analyzed empirically, we think that until there are a significant number of radio-television combinations in the marketplace, a cautious approach is more prudent. However, we are adopting a different type of waiver approach than that suggested by those commenters, whereby we will be predisposed to grant applications meeting one of two specific, rather strict standards (discussed in the previous section) and all others will be evaluated based on certain public interest factors described in this section.

96. Second, because the communications industry is undergoing such rapid change, we feel that prudence calls for an incremental approach that avoids any sharp departures from the current rule. As stated previously, we believe that it is best to err on the side of caution, particularly when a longstanding policy such as the radio-TV cross-ownership rule is involved. This waiver approach will also avoid the possibility of rapid restructuring in the communications industry as broadcasters seek to take advantage of any rule change.

97. Third, by adopting this new waiver policy, we can assess the effect of any previously granted broadcast station mergers or preexisting media outlet combinations in a given market before allowing new radio-TV combinations. In other words, we will be able to limit common ownership of radio and TV stations to those situations where it will not measurably diminish competition and diversity.

SUMMARY

98. In sum, we find that the record supports our initial evaluation in the *Notice* that the radio-TV cross-ownership prohibition should be relaxed to allow common ownership of radio and television stations in the same market to some degree. Therefore, we are adopting a policy of being disposed to grant such combinations when our "top 25 markets/30 voices" or "failed" station waiver standards are met, and have set forth general criteria for a case-by-case approach for all other waivers. This action is appropriate in light of the substantial growth in media outlets in markets of all sizes and the efficiencies of scale inherent in joint ownership of stations, which may lead to more news and public affairs programming. We find that this modification best balances the benefits inherent in the joint ownership of stations against our concerns regarding diversity and economic competition.

FINAL REGULATORY FLEXIBILITY ANALYSIS

I. Need for and Purpose of this Action:

This action is taken to establish a new waiver policy for the "one-to-a-market" or radio-TV cross-ownership rule, thus recognizing the substantial public interest benefits of common station ownership while fostering maximum competition in broadcasting and diversification of programming and viewpoints. Although this rule was originally adopted to ensure diversification of viewpoints and programming, that purpose is now adequately served in many situations by the tremendous growth in the number and the variety of media outlets in recent years. Thus, we believe that the more relaxed waiver policy is appropriate.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No comments were received in response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected:

We considered four alternatives before adopting the approach set forth in this *Second Report and Order*. The first option, to leave the radio-television cross-ownership rule in its present form, would retain an unnecessary and overly stifling restriction on station ownership. This option also fails to recognize the substantial growth in the communications marketplace and the significant public benefits of joint station ownership.

The second option, to completely eliminate the rule, would give broadcasters the maximum flexibility in acquiring broadcast stations. However, this approach might be viewed by some as an abandonment of our traditional diversity and competition concerns, which could result in numerous radio-TV combinations before the Commission has assessed the ramifications of such consolidations.

The third option involves permitting AM-VHF, AM-UHF, and AM-FM-UHF combinations in all markets, and allowing other radio-TV combinations on a case-by-case basis. The main advantage of this option is that it helps to revitalize the faltering AM broadcast service, enabling AM broadcasters to combine with profitable television stations with greater financial resource. On the other hand, this option denies the same benefits to FM broadcasters and may overemphasize the possible adverse impact that local FM-TV combinations would have on economic competition and viewpoint or programming diversity, thus preventing the public from realizing the significant benefits of such combinations.

The fourth option is to eliminate the radio-TV cross-ownership rule only in large television markets, and to allow radio-TV combinations on a case-by- case basis in all other markets. However, this option would deny the benefits of joint ownership to broadcasters in smaller markets and could also cause significant structural changes in the industry before the Commission can study all of the effects of such an approach.

The action which we are adopting in this decision is to retain the rule but to adopt new policies for evaluating waiver requests. Such an incremental approach will best protect our traditional competition and diversity concerns while enabling the public and broadcasters to realize the benefits of common ownership.

The Secretary shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.*, (1981)).

PAPERWORK REDUCTION ACT STATEMENT

The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any

new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed the Act.

99. Authority for the rule changes adopted herein is contained in Sections 4(i) and (j), and 301, 303, 308 and 309 of the Communications Act of 1934, as amended.

100. Accordingly, it is ORDERED that the amendments to the Commission's Rules and Regulations herein, as set forth in the Appendix below, ARE ADOPTED, to become effective **March 31, 1989.** In addition, it is ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 CFR Part 73 of the Commission's Rules are amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 1, 5, 4 and 303.

2. Section 73.3555 is amended by deleting the fifth and sixth sentences of Note 4 which begin with the words "This section" and end with the words "public interest" and by adding a new Note 7 to read as follows:

73.3555 Multiple ownership.

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (b) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards: (1) those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market; or (2) those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.*, four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide*. We will determine the number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records. Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87-7, FCC 88-407. In implementing this new waiver policy, we will not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM and FM station within any single television metropolitan market.

FOOTNOTES

[1] 47 C.F.R. Section 73.3555(b).

[2] 2 FCC Rcd 1138 (1987), *summarized*, 52 Fed. Reg. 8086 (March 16, 1987).

[3] *First Report and Order* in Docket No. 87-7, FCC No. 88-343.

[4] These commenters were the Consumer Federation of America (CFA), the National Black Media Coalition (NBMC), the United Church of Christ (UCC), and Jacor Communications, Inc. Their arguments are addressed *infra* at paras. 22-24, 52-53, and 62-63.

[5] As we stated in the *Notice*, the "one-to-a-market" provisions of the broadcast multiple ownership rules were adopted in two stages. In the first stage, a party was restricted to one AM-FM combination or to one television station in a market. *See First Report and Order* in Docket No. 18110, 22 FCC 2d 306 (1970), *recon. granted in part*, 28 FCC 2d 662 (1971). In the second stage, the rule was extended to cover newspapers. *See Second Report and Order* in Docket No. 18110, 50 FCC 2d 1046 (1975), *recon. granted in part*, 53 FCC 2d 589 (1975), *aff'd sub nom. FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978). In a separate proceeding, the Commission adopted cable-broadcast cross-ownership rules which, *inter alia*, prohibited the common ownership of a cable television system and a television broadcast station whose predicted Grade B contour covers any portion of the service area of the cable television system. 47 C.F.R. Section 76.501(a)(2). *See Second Report and Order* in Docket No. 18397, 23 FCC 2d 816 (1970), *recon. denied*, 39 FCC 2d 377 (1973). Neither the broadcast-newspaper nor the broadcast-cable cross-ownership provisions are at issue in this proceeding.

[6] 47 C.F.R. Section 73.3555, Note 4 (1986).

[7] *See, e.g., Central Broadcasting Co., Inc.*, 21 R.R. 2d 482 (1971); *American Public Life Broadcasting Co.*, 36 R.R. 2d 1181 (1976); *Wilton E. Hall*, 43 R.R. 2d 91 (1978); *WOIO (TV)*, 1 FCC Rcd 293 (1986).

[8] *See, e.g., Windmill Broadcasting Co.*, 44 R.R. 2d 475 (1978); *John H. Garabedian*, 47 R.R. 2d 1444 (1980).

[9] *See First Report and Order* in Docket No. 87-7 at para. 7. *See also* para. 16 *infra*.

[10] For instance, on the national level, we allow a person or entity to have cognizable ownership interests in 12 commercial broadcast stations in each of the three major broadcast services (AM, FM, and television). 47 C.F.R, Section 73.3555(d)(1). Locally, we permit the common ownership of commercial AM and FM stations in the same community or market and also have allowed, on a case-by-case basis, the joint ownership of commercial radio and UHF television stations in the same market upon a showing that such combinations would promote the public interest.

[11] These percentages, as well as others discussed *infra*, are based upon station totals contained in the following chart, illustrating growth in various categories of stations for 1970 and 1988.

Year	AM	FM	TV	Total
1970	4,370	2,722	1,035	8,127
1988	4,923	5,493	1,791	12,207

The figures for 1970 are derived from *FCC Annual Report - FY 1970*, at 141. The 1988 station totals are based upon Commission records as of October 31, 1988.

[12] In addition to the growth in the traditional broadcast services, there has been a rapid expansion in the new low power television service. Established in 1982, there were 410 licensed low power stations (301 UHF and 109 VHF stations) as of October 31, 1988.

[13] The estimated growth of the cable television industry for the years in question are as follows:

Year	Operating Cable Systems	Total Subscribers
1970	2,490	4,500,000
1987	8,000	43,279,980

These statistics are derived from *Television and Cable Factbook*, Cable and Services Volume, 1987 Edition, Number 55, at A-40.

[14] *The Kagan Media Index*, Paul Kagan Associates, Inc., May 17, 1988 at 3.

[15] *See Notice*, 2 FCC Rcd at 1140, paras. 15-16.

[16] *See, e.g.*, Comments of Bonneville International at 6-10 (Salt Lake City, Utah (market 41), Anchorage, Alaska (market 157), and Fairbanks, Alaska (market 205)); Comments of Capital Cities/ABC at 14-21 (New York (market 1), Portland (market 25), and Memphis (market 43)); Comments of Taft Broadcasting (Taft's 12 markets); and Comments of Fisher Broadcasting at 5-6 (Fisher) (Seattle-Tacoma, Washington, and Portland, Oregon). All market ranks referred to in this note are based upon A.C. Nielsen's ranking of Designated Market Areas.

[17] *See, e.g.*, Comments of CBS, Inc. (CBS) (top twenty TV markets and TV markets 51-55); Comments of NAB (all 209 DMA TV markets); Comments of National Broadcasting Company (NBC) (top 75 radio markets and top 75 television markets); and Jet Broadcasting (top 150 radio markets).

[18] Comments of NAB, Appendix B, "An Analysis of Media Outlets by Market" (June 1987) (NAB Media Outlet Study). Using A.C. Nielsen's Designated Market Areas (DMA's) as the relevant markets, the study counted the following media outlets: (1) the total number of television stations within each DMA; (2) the number of commercial radio stations (AM, FM, and combinations) which have a reportable audience share and are located within each DMA's recognized "metro" area; (3) the number of newspapers published within each DMA; (4) the number of significant newspapers and periodicals within each DMA -- *i.e.*, those whose circulation figures equal at least 5% of the households; (5) cable penetration (the percentage of television households within each DMA that subscribe to cable television) and the average number of cable channels in use in each market; and (6) the VCR penetration within each DMA (the percentage of television households with VCR's).

[19] NAB Media Outlet Study at 1.

[20] The following table sets forth the average number of broadcast outlets in different market categories:

Market	TV	AM	FM	Total
1-25	13.4	29.8	29.2	72.4
26-50	7.6	15.8	13.4	36.8
51-75	7.5	14.1	12.1	33.7
76-100	6.7	10.5	9.0	26.2
101-125	5.6	7.6	8.1	21.3
126-150	5.7	9.2	9.0	23.9
151-175	3.9	4.8	5.0	13.7
176-200	2.8	3.6	3.8	10.2
201-209	3.1	2.5	3.3	8.9

NAB Media Outlet Study, Figure I. We note that there appear to be slight mathematical errors in a few of these averages, but we do not believe that these errors affect the study's general conclusions in any way.

[21] *Id.* at Figure VI.

[22] *Id.* at Figure III.

[23] *First Report and Order* in Docket No. 18110, 2 FCC 2d at 310, *quoting Associated Press v. United States*, 326 U.S. 1, 20 (1945).

[24] *See Policy Statement on Comparative Broadcast Hearings* (1965 *Policy Statement*), 1 FCC 2d 393, 394 (1965). These factors include the extent to which owners are integrated into or participate in the management of a station, the degree to which there will be local ownership, and a consideration of which proposal will most efficiently utilize the broadcast spectrum.

[25] Comments of CBS at 21.

[26] *Id.*

[27] As an example, NBC points out that its stations have taken different approaches to the question of contraceptive advertising -- two of its owned TV stations have decided to accept such ads, while three of its other stations have refused. Meanwhile, the NBC owned radio stations have decided not to accept contraceptive advertisements and instead will address this topic through a broad-based public service effort.

[28] NAB Media Outlet Study, Appendix II, Market Level Data.

[29] *See First Report and Order* in Docket No. 87-7 at para. 30.

[30] Comments of Jet Broadcasting at 2.

[31] UCC and CFA have also maintained that the language of the 1984 Cable Act, 47 U.S.C. § 553(a), and the 1982 lottery amendments to the Communications Act, 47 U.S.C. § 309(i)(3)(A), suggests Congressional intent to codify existing local ownership rules. However, with respect to the lottery law, the preference for diversity contained in section 309(i) does not imply a legal barrier to modifying our multiple ownership rules; indeed, the lottery law itself does not preclude grants to nondiverse owners. In addition, the broadcast ownership prohibitions of the Cable Act apply only to cable-broadcast common ownership, and we are not addressing that area in this proceeding.

[32] *See* Comments of CFA at 7-8 and Comments of UCC at 3.

[33] The UCC notes that in our 1970 *First Report and Order* we stated that "60 different licensees are more desirable than 50, and even 51 are more desirable than 50." *See* Comments of UCC at 3, *citing* 22 FCC 2d at 311. As stated previously, however, we find that diversity of viewpoint is only one factor to consider in achieving our ultimate public interest objectives. Diversity must be balanced against other public interest goals and the result of that balance may shift as the number of voices in a market increases.

[34] *See* Comments of CFA at 10-11; Comments of UCC at 6, 9.

[35] We acknowledged in our *First Report and Order* that there continues to be a scarcity of available frequencies relative to demand in many markets, as noted by CFA in its comments.

Comments of CFA at 5-6. However, the argument that such scarcity implies that no modification of our cross-ownership rule is justified rests on the faulty premise that economic scarcity is a reliable indicator of the degree of viewpoint or programming diversity. For example, that logic suggests that there would be no diversity problems in a small market with one or two media outlets and a frequency lying fallow, whereas there would be an absence of viewpoint diversity in New York City because there are no unused frequencies but many media outlets.

[36] *See, e.g.*, F.M. Scherer, *Industrial Market Structure and Economic Performance* 276-95 (2d ed. 1980).

[37] John E. Kwoka, "The Effect of Market Share Distribution on Industry Performance," *Review of Economics and Statistics*, vol. LXI, No. 1, February, 1979 at 101-109.

[38] There are, in fact, some studies which suggest that some modest increase in the level of concentration similar to what we contemplate herein may actually be associated with an increase in the economic efficiencies in the market. *See, e.g.*, Leland L. Johnson, *Regulation of Media Ownership by the Federal Communications Commission: An Assessment* (Santa Monica: The Rand Corporation, December 1984) at 46-54.

[39] *First Report and Order* in Docket No. 18110, 22 FCC 2d at 314.

[40] *Id.* at 314.

[41] HHI is one of several screening devices used by DOJ to measure market concentration in order to assess the effect on competition of the merger of two or more firms in the same industry by considering the relative market shares of all the firms before and after the proposed merger. More specifically, the HHI is defined as the sum of the square of the shares of some measure of output (such as sales or revenues or assets or audience) accounted for by all the firms in the market. In essence, under the *Merger Guidelines*, markets with an HHI below 1,000 are classified as "unconcentrated," while markets with HHI's between 1,000 and 1,800 are "moderately concentrated," and markets with HHI's over 1,800 are considered to be "highly concentrated". Department of Justice, *Revised Merger Guidelines*, 49 Fed. Reg. 26823 (June 29, 1984).

[42] CBS based its HHI's on "the number of people reached during the average quarter-hour for each television station, radio station, superstation, major cable network, and VCR viewing of prerecorded material in each of the top 20 markets" in 1987. Wilkofsky Gruen Associates Inc., *Market Concentration Analysis* (April 14, 1987) (CBS Concentration Study), attached as Appendix D to Comments of CBS, at 1.

[43] *See* CBS Concentration Study, Table I.

[44] In analyzing potential mergers, DOJ first looks at the HHI pre-merger and post-merger. Generally DOJ will not challenge mergers in unconcentrated industries, that is, industries in which the HHI after the merger would be below 1000. Even if DOJ finds that the merger would take place in a moderately concentrated market or a highly concentrated market, DOJ is unlikely to challenge the merger if the HHI rises by less than 100 in a moderately concentrated market or less than 50 in a highly concentrated market. DOJ, *Revised Merger Guidelines*, 49 Fed. Reg. 26823 (June 29, 1984).

[45] The results of the NBC concentration analysis are as follows:

	Share of Total Broadcast Advertising Revenue of Most - Watched TV Station	Share of Total Broadcast Advertising Revenue of Most - Listened To AM and FM Stations	
		FM	AM
New York	15.46%	1.32%	1.07%
Chicago	18.56%	3.01%	2.55
Washington, D.C.	15.99%	2.9%	2.9%

See Comments of NBC at 18 and Exhibit 24 appended thereto.

[46] Nielsen Television Index, 1977, 1987.

[47] *See, e.g.*, Comments of Capital Cities/ABC, Inc. (ABC) at 22-24.

[48] *See, e.g.*, Comments of CBS at 10; Comments of Westinghouse Broadcasting Company, Inc. (Group W) at 11.

[49] *See, e.g.*, Comments of Group W at 12.

[50] *See* Harrison, Bond, & Pecaro, "Benefits from Joint Ownership of a Radio and Television Station in the Same Market," attached as Appendix C to Comments of NAB.

[51] *See* Comments of Gillett Holdings, Inc. at 5; Comments of ABC at 29-32.

[52] *See* Frazier, Gross, & Kadlec, "Financial Analysis of Potential Efficiencies of Radio/Television Combinations in the Same Market," attached as Appendix D to Comments of NAB (FGK Study).

[53] It should be noted that this study includes only stations that reported their 1985 financial performance to the NAB. The study indicates that a cross-section of stations was used, but does not indicate how the sample was taken. In addition, the study does not indicate whether adjustments were made to take into account differences in station sizes and market sizes, *i.e.*, whether the combination stations were of equal power and in equal-sized markets as the individual stand-alone AM or FM stations. While these factors might affect the accuracy of the specific numerical estimates in the study, we do not believe that they would change the overall conclusions which this study draws, because it seems likely that even after adjusting for station power and market size, the profitability of jointly operated stations would exceed that of stand-alone stations.

[54] A comparison of the average return on revenues for the stations analyzed in this study is as follows:

	Average Return on Revenue for Radio Stations Jointly Operated with TV Stations	Average Return on Revenue for Stand - alone Radio Stations
AM Stations	25.2%	(13.6%)
FM Stations	30.3%	(8.8%)
AM-FM Combinations	12.0%	17.9%

[55] The following is a comparison of the average percentages of station budgets allocated to general and administrative (G&A), programming, news, sales, and other categories of expenses for the stations analyzed in the FGK Study:

	AM with TV	Stand - alone AM	FM with TV	Stand - alone FM
Program-ming	36.2%	30.8%	21.6%	16.7%
Technical	7.7%	5.6%	4.6%	5.1%
News	9.3%	5.0%	4.7%	1.9%
Sales	17.0%	20.3%	30.2%	24.4%
Adv. & Promo	9.3	8.6%	11.8%	12.2%
G & A	20.5%	29.7%	27.1%	39.7%

See FGK Study, Exhibits 3 and 5, attached as Appendix D to Comments of NAB.

[56] Based on the FGK Study, the following is a comparison of sales costs as a percentage of total time sales for radio stations operating with or without television stations in the same market. These figures represent averages for each category of stations used in the study.

	Radio Stations Operating with TV	Stand - alone Radio Stations
AM Stations	11.0%	20.7%
FM Stations	18.4%	23.5%
AM-FM Combinations	15.5%	15.0

[57] *See, e.g.*, Comments of Jacor Communications at 2-3; Comments of UCC at 9-10; and Comments of CFA at 9-11.

[58] *See* Comments of Gillett Holdings, Inc. at 2-7.

[59] *See supra* note 55. Specifically, AM and FM stations owned and operated with a TV station spent, on the average, 9.3% and 4.7% of their budgets on news, whereas stand-alone AM or FM stations devoted, on average, 5.0% and 1.9% of their budgets to this category, respectively.

[60] FCC, *Television Broadcast Programming Data, 1979*, Mimeo No. 01505, released December 15, 1980.

[61] The results of NBC's comparison of the airing of informational programming in 1979 is as follows:

	Average of TV Stations in Top 25 Markets	Average of NBC's TV Stations
6 a.m. - Midnight		
Total News and Public Affairs	14.3%	20.7%
Local News and Public Affairs	8.7%	12.0%
6 p.m. - 11 p.m.		
Total News and Public Affairs	15.1%	22.3%
Local News and Public Affairs	9.3%	13.2%

[62] NAB Research and Planning Department, "Public Service Programming by Group-Owned and Non-Group-Owned Television Stations," attached as Appendix A to Comments of NAB in Gen. Docket No. 83-1009.

[63] According to the NAB study, the following is a summary of the percentage of an average broadcast day in 1982-83 devoted to various categories of programming by group-owned and non-group-owned stations surveyed:

	Group - Owned TV Stations	Non - Group - Owned TV Stations
Informational Programming	18.4%	12.9%
Local Programming	10.1%	6.9%
Total Non-Entertainment Programming	32.1%	24.8%

[64] *See* CFA Comments at 10-13.

[65] The 1985 study is reported in the *New York Times*, September 17, 1985 at C17; the 1987 study is summarized in *Broadcasting*, June 15, 1987 at 61. We note that these studies were not attached or included in CFA's comments; instead, CFA merely attempted to restate some of the conclusions of these studies. More importantly, the RTNDA studies did not specifically compare news personnel and informational programming on commonly owned radio and TV stations with that of separately owned stations. Therefore, whatever the significance of the RTNDA studies, they plainly do not provide evidence to disprove the idea that radio-TV combinations may do more news and public affairs programming than separate stations.

[66] In this proceeding, we address only whether relaxing our restrictions on group ownership (in contrast to deregulation generally) is likely to provide programming benefits. *See* paras. 56-61 *supra*, addressing the evidence on group ownership and programming practices.

[67] Finally, CFA and NBMC argue that changing the local ownership rules would raise the prices of broadcast stations and thus impede new entrants into the broadcast industry, particularly minorities and women. It is true that relaxing the radio-TV cross-ownership rule may lead to cost savings and increased efficiencies in station operation, which could increase the value and thus raise the selling price of such combinations. If that happens, then higher station prices would reflect the efficiencies of joint ownership and thus may be viewed as a desirable rather than an undesirable result. Moreover, because we have adopted a modest waiver policy with a minimum voice standard, there are only a limited number of combinations that may occur in each market. Thus, one would not expect there to be more than a minimal price increase for radio or television stations. Furthermore, we do not believe that the goal of the multiple ownership rules is to control broadcast station prices. In any event, to the extent that this may affect minorities and women, we believe that these concerns can be addressed by our other policies, such as distress sales, tax certificates, and comparative or lottery preferences, which are not affected by this decision.

[68] *See also First Report and Order* in Docket No. 87-7 at para. 37.

[69] We have utilized this rationale in permitting, on a case-by-case basis, the common ownership of certain radio and UHF television stations in the same market. *See, e.g., American Public Life Broadcasting Co.*, 36 R.R. 2d 1181 (1976); and *Central Broadcasting Co.*, Inc., 21 R.R. 2d 482 (1971).

[70] *See generally Report on the Status of the AM Broadcast Rules*, prepared by Mass Media Bureau, Gen. Docket No. 87-26, released April 23, 1986.

[71] *See* Report on Television Channel Utilization, March 11, 1988, Mimeo No. 1945, Table I. In addition, we estimate that there are approximately 180 unused or vacant FM radio allocations.

[72] *See, e.g., Windmill Broadcasting Co.*, 44 R.R. 2d 475 (1978).

[73] *See* Reply Comments of Nelson Enterprises, Inc. and Nelson Broadcasting, Inc. at 4.

[74] We will not grant a tax certificate under Section 73.4255 of our Rules to any entity that sells a station acquired under this waiver policy or through any other waiver of our multiple ownership rules. In addition, for station sales involving the break-up of grandfathered station combinations, we will continue to grant tax certificates only if these sales are consistent with the policies underlying our multiple ownership rules, *i.e.*, they will not result in another radio-TV combination or an AM-AM or FM-FM combination in the same market.

[75] *See* Comments of NAB, Tribune Broadcasting, Washington Legal Foundation, Bonneville International Corporation, Fisher Broadcasting, Transwestern Communications, Inc., Clear Channel Communications, Golden Empire Broadcasting Co., and NBC.

[76] In addition, one commenter claimed that this option may exceed the scope of the *Notice*. *See* Comments of CFA at 1-2 n.2. Because we are not adopting this option, however, and are instead retaining the rule as is and setting forth a general statement of policy with respect to waivers, the issue is moot.

[77] *See, e.g.*, Comments of Shamrock Broadcasting, Inc., Western Broadcasting Corporation of Puerto Rico, Midwest Family Broadcasting, Maryland-DC-Delaware Broadcasters Association, and Gillett Holdings, Inc.

[78] This approach was also based on the assumption that typically an FM or VHF TV station may not benefit as much from the financial assistance of a commonly owned local radio or television station, because FM and VHF TV stations tend to have greater advertising revenues and listening audiences than AM and UHF TV stations.

[79] Indeed, the FTC staff stated in its reply comments that, "Common ownership of an FM station and a VHF or UHF television station is likely to generate efficiencies similar to those that result from common ownership of an AM station and a VHF or a UHF television station." Reply Comments of Bureaus of Competition, Consumer Protection and Economics of the Federal Trade Commission at 11.

[80] *See, e.g.*, Comments of CBS, Taft Broadcasting, Group W, Capital Cities/ABC Inc., and Jet Broadcasting. In addition, NBC suggested that, if the Commission decides not to eliminate the radio-TV rule in all markets, then two appropriate cut-off mechanisms would be to not apply the rule in a market with 30 different broadcast stations or with 15 separate owners of broadcast stations and daily newspapers. Similarly, Jet Broadcasting stated that the rule can be eliminated in most markets subject to whatever criteria may be necessary to prevent undue concentration in lesser served markets. For example, Jet suggested restricting radio-TV cross-ownership in markets with an unusually small number of licensees or less than three television stations.

[81] *See, e.g.*, Comments of Jacor Communications, Inc. at 4-5; Comments of the Maryland-District of Columbia-Delaware Broadcasters Association, Inc. at 3.

[82] Under this policy, all waiver requests will be referred directly to the Commission *en banc* for disposition.

[83] These specific criteria are also intended to address the concerns raised by the U.S. Court of Appeals for the D.C. Circuit in *Astroline Communications Company Limited Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) *(Astroline)*. In that case, the court instructed the Commission to articulate or develop standards to govern its public interest evaluation of waiver requests under the Note 4 UHF TV exception to Section 73.3555, 47 C.F.R. Section 73.3555. We intend to set forth herein clear and easily applied criteria. We will, of course, address the specific matter remanded to us in *Astroline* in a separate order on remand in that proceeding.

[84] Under this standard, we will rely on data in the most recent volume of the *Arbitron Ratings Television ADI Market Guide* in determining market size and the relevant ADI television market and TV metropolitan market.

[85] For the purposes of this standard, we will rely on data contained in the most recent Commission ownership records in order to determine the *number* of television stations in the relevant ADI TV market and the *number* of radio stations located in the relevant TV metropolitan market for each prospective combination. As stated earlier, we will rely on data in the most recent volume of the *ADI Market Guide* to determine the relevant ADI TV market and TV metropolitan market for each combination.

[86] Conversely, we will not include any non-operational or dark stations for the purposes of this count.

[87] Under these provisions, an individual has a "cognizable" interest in a broadcast station if the individual is an officer, director, partner, or owner of 5% or more of the voting stock of the station. 47 C.F.R. Section 73.3555, Note 2 (1986). There are, however, several notable exceptions to these attribution limits. *See* 47 C.F.R. Section 73.3555, Note 2.

[88] We note that in the *First Report and Order* we modified our radio duopoly rule in such a way that it would be possible for one licensee to own two or more radio stations in the same service within the same geographic market if their principal city contours do not overlap. However, because our "top 25 markets/30 voices" waiver standard incorporates the number of licensees or "voices" in a market, a licensee operating two AM or two FM stations within the same market under our revised radio duopoly rule would count as only one "voice" against our 30 voices requirement. Thus, our waiver standard would take into account the effect of our modified duopoly rule in determining whether a particular market is sufficiently competitive to permit a waiver of the radio-TV cross-ownership rule.

[89] If any organization receives a waiver under this standard, it will not later be required to divest if the market drops below the top 25 or the number of voices within the market later falls below 30. However, if an entity decides to sell stations acquired under this waiver and the market no longer satisfies the "top 25 markets/30 voices" standard, the waiver will not automatically transfer with the stations.

[90] *Notice*, 2 FCC Rcd at 1141.

[91] Although the CBS media concentration or HHI study, described *supra* at paragraph 28, reviewed only the top 20 markets, we note that the remaining five of the top 25 markets have very similar characteristics and are largely unconcentrated. Furthermore, we anticipate that any anticompetitive behavior by broadcasters in these markets would be brought to the attention of the Commission or antitrust authorities.

[92] *See supra* para. 14.

[93] *See, e.g.*, 47 C.F.R. Section 73.658(k) (prime time access rule). By its terms, the prime time access rule, which limits the amount of network or off-network programming that a station can broadcast in a day, applies only to stations in the top 50 markets.

[94] *See* Comments of NTIA at 9. In particular, NTIA noted that because radio and television markets are not equivalent, it is important to use the market of the station to be acquired in order to accurately reflect the broadcast services available in the community involved. Specifically, NTIA recommended using the number of independently owned AM stations in the radio market where the station to be acquired is located in order to determine the impact of the proposed combination on diversity in that community. We have taken this concern about using the appropriate geographic market into account by totalling the

number of television stations in the relevant ADI TV market and radio stations in the relevant TV metro market for the purposes of our "30 voices" standard.

This waiver standard is based upon market rank and a minimum number of separate station voices in order to assess the number of potential competitors in a particular local area. Although we stated in our recent *First Report and Order* that most radio listening occurs within a station's principal city contour, other stations located within the same local area but outside that contour may nevertheless provide competition for and be receivable by some portion of the station's audience. In addition, because every station in a local market may have a different area of signal and audience coverage from every other station, using a principal city contour standard in this context would seem unduly burdensome. For the purposes of administrative ease and in order to provide certainty to our licensees and license applicants, it is important that we use a definition of the geographic market area which will not vary with each new proposed merger in the same city.

[95] Comments of NBC at 38.

[96] NBC suggested using 30 stations per market. Our standard will be 30 voices, which is substantially more restrictive than that proposed by NBC, since the number of stations usually significantly exceeds the number of separate owners in a market. Unlike NBC's proposal, our standard will be implemented on a case-by-case basis rather than as an outright exception to the radio-TV cross-ownership rule. In addition, as explained in more detail above, our standard will encompass all television stations within the ADI television market but only radio stations located within the TV metro market, which is a smaller geographic area than the ADI. Finally, unlike NBC's proposal, the standard we are adopting is limited to conventional broadcast outlets.

[97] For example, in New York, the largest television market as measured by population, we estimate that there are currently 117 separate voices, including 12 commercial and 6 non-commercial TV stations. Of the 12 commercial stations, 4 are already combined with an AM station or an AM-FM radio combination. Hence, under this waiver criteria, although some existing combinations could potentially be expanded, at most 8 TV stations not now combined with a radio station would be able to combine with one or two radio stations.

[98] Although we will not specifically define what constitutes a "substantial period of time" in this regard, we anticipate that this criteria will not be satisfied unless the station has been off the air for at least several months, *e.g.*, four months. We believe that it is unlikely that a station would remain off the air for such a length of time absent serious financial difficulties.

[99] *See supra* para. 5.

[100] In particular, a showing of negative cash flow will not be considered adequate proof that a station meets our "failed" station test.

[101] For the purposes of this determination, we intend to use the same geographic market definition as for the "top 25 markets/30 voices" standard, *i.e.*, the relevant TV metro market for radio stations and the relevant ADI TV market for TV stations.

[102] In this regard, we would look more favorably upon waiver requests if the proposed combination would in fact strengthen competition or diversity in the market. For example, allowing joint ownership of a low-ranking radio and television station may enable the new combination to compete effectively with a particularly dominant media outlet in the market, thereby creating incentives for both outlets to improve their programming and service to the public.

[103] Applicants relying on this ground should supply appropriate documentation, including a history of the station's past financial losses and predictions of projected losses for the next several years. Information to demonstrate that the station has been offered for sale for a reasonable time period at a reasonable price will be particularly important. Furthermore, it would be helpful to have information about the size, demographics, and economic condition of the market so we can consider whether the market could support the failing station absent cross-ownership.

[104] In addition, we will address the specific concerns raised by the court in *Astroline* in reviewing these Note 4 waiver requests.

[105] *See supra* at para. 71.

[106] *See* Comments of Jacor Communications at 5; Comments of CFA at 10, 14.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 87-551

In the Matter of

Amendment of Part 1 of the
Commission's Rules Concerning
Radio frequency Radiation Compliance
of FM Booster Stations

ERRATUM

Released: February 23, 1989

1. The *Report and Order* in the above-captioned proceeding (FCC No. 88-401) was adopted December 9, 1988, and released December 29, 1988. The *Report and Order* added FM booster stations, licensed under Part 74, Subpart L, of the Commission's Rules, to the category of facilities subject to the requirements for evaluating environmental radiofrequency radiation set out in Section 1.1307(b) of the Rules. FM translator stations, limited to only 10 watts of power under Subpart L, were categorically excluded from Section 1.1307(b) because of their low operating powers. It had been intended that *all* low-powered stations authorized under Subpart L be categorically excluded. However, an exclusion for low-powered FM booster stations was inadvertently omitted from the rule amendment. Therefore, the amendment to Section 1.1307(b) IS CORRECTED to read as follows:

The amendment to Section 1.1307 is corrected to read:

§ 1. 1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.

* * * * *

(b) * * *

NOTE: Paragraph (b) shall apply to facilities and operations licensed or authorized under the following Parts of the Commission's Rules: 5, 25, 73, 74 (Subpart A), 74 (Subpart G), 74 (Subpart L; applies only to FM booster stations with output powers in excess of 10 watts), and 80 (applies only to ship earth stations). Facilities and operations licensed or authorized under all other Parts, Subparts, or Sections of the Commission's Rules shall be categorically excluded from consideration under paragraph (b), unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraphs (c) or (d) of this Section.

* * * * *

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-492

In the Matter of

Amendment of Section 73.202(b),	RM-6414
Table of Allotments,	
FM Broadcast Stations.	
(Borger, Texas)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1989; Released: February 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 6126 (1988), issued at the request of Fun Radio Group, Inc. (petitioner), licensee of Station KDXR(FM), Channel 282C, Borger, Texas, proposing the substitution of Channel 282C1 for Channel 282C at Borger.[1] The *Notice* also proposed the modification of the station's license to specify operation on Channel 282C1. William H. Sanders filed supporting comments restating his intention to construct the Class C1 facilities as proposed in the *Notice*.[2] No other comments were received.

2. As stated in the *Notice*, the downgrading of Station KDXR(FM) is necessary since petitioner wishes to relocate its station's current transmitter site to an area that the Federal Aviation Administration (FAA) is unlikely to approve a full Class C operations. Petitioner seeks the downgrading of its facilities in order to avoid problems with the FAA. Sanders states that due to "aeronautical and site availability" concerns he desires to utilize the restricted site proposed by the former licensee.

3. Based on the information before us, we conclude that the public interest would benefit from the substitution of Channel 282C1 for Channel 282C at Borger. The substitution can be made in compliance with the Commission's minimum distance separation requirements at a site 37.1 kilometers (23.0 miles) southwest of the city.[3] In accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are herein modifying the license of Station KDXR(FM) to specify operation on Channel 282C1.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

City	Channel No.
Borger, Texas	282C1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KDXR(FM), Channel 282C, Borger, Texas, IS MODIFIED, to specify operation on Channel 282C1 in lieu of Channel 282C, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Although Station KDXR(FM) is licensed as a Class C2 facilities, there is an outstanding construction permit specifying a full Class C operations (BPH-860312IF).

[2] On November 16, 1988, the Commission granted an assignment of license for Station KDXR(FM) to William H. Sanders from Fun Radio Group, Inc., (BALH-881006GI).

[3] The restricted site coordinates are 35-23-17 and 101-38-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-146

In the Matter of

Amendment of Section 73.202(b), RM-6048
Table of Allotments,
FM Broadcast Stations.
(Osceola, Arkansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 3, 1989; Released: February 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 3 FCC Rcd 2309 (1988), proposing the substitution of Channel 251C for Channel 251C2 at Osceola, Arkansas, and modification of the license of The Dittman Group, Inc. (TDG) for Station KMPZ(FM)[1] accordingly.[2] The petitioner filed supporting comments, and the former licensee of KMPZ(FM) filed late comments. [3]

2. Channel 251C can be allotted to Osceola at the petitioner's specified site[4] in conformity with the minimum distance spacing requirements of Section 73.207(b) of the Commission's Rules.

3. On the basis of the above, the Commission believes the public interest would be served by substituting Channel 251C for Channel 251C2 at Osceola, Arkansas, since it could provide a first wide coverage area FM service to the community. Therefore, and in accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Station KMPZ(FM) to specify operation on Channel 251C in lieu of Channel 251C2 at Osceola, Arkansas, as requested.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Osceola, Arkansas	251C

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of The Dittmann Group, Inc. for Station KMPZ(FM), IS MODIFIED, effective **April 10, 1989,** to specify operation on Channel 251C in lieu of Channel 251C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Formerly Station KWLN(FM).

[2] At the time this proposal was filed, Pollack Broadcasting Company was the licensee of Station KWLN(FM). An assignment of the construction permit and license to TDG (BAPLH-880302GH) was subsequently granted June 14, 1988.

[3] These comments, which merely advise us of the then-pending assignment application, as noted above, were accompanied by a motion to accept. Moreover, since they simply reaffirm an interest in the modification proposal on behalf of TDG, no prejudice will result from their acceptance.

[4] Compliance with our technical requirements is met based on reference coordinates at the site specified in petitioner's modified construction permit for Class C1 facilities (File No. BMPH-880527ID), as follows: 35-28-02 and 90-11-27.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-312

In the Matter of

Amendment of Section 73.202(b),	RM-6127
Table of Allotments,	RM-6135
FM Broadcast Stations.	
(Pearl and Magee, Mississippi)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 3, 1989; Released: February 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 3 FCC Rcd 5155 (1988), proposing the allotment of Channel 230A as a first FM service to Pearl, Mississippi, or as a second FM service to Magee, Mississippi. The *Notice* was issued in response to petitions filed by Colen Johnson (Johnson) for Pearl, and Airwaves Company (Airwaves) for Magee. Airwaves filed comments restating its intention to apply for Channel 230A at Magee. Colon Johnson filed a counterproposal[1] to which Airwaves filed a response. No other comments were received.

2. As indicated in the *Notice*, Channel 230A could be allotted to Pearl with a site restriction 7.1 kilometers (4.4 miles) northeast of the community. Channel 230A could also be allotted to Magee consistent with the Commission's spacing requirements at the city reference coordinates. The *Notice* further indicated that should the channel be allotted to Magee, the filing window would be delayed until Station WXLT, McComb, Mississippi, was granted a license at its new site as a Class C1 facility. Station WXLT has been granted a license for Channel 231C1.[2]

3. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission's general policy to refrain from making a new allotment to a community absent an expression of interest. Therefore, since comments were not received from Colon Johnson or any other party expressing an interest in Pearl, we will dismiss Colon Johnson's proposal.

4. In view of the fact that Channel 230A can be allotted to Magee consistent with the spacing requirements and provide the community with its second FM broadcast service, we find the allotment to be in the public interest.[3] Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 10, 1989**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Magee, Mississippi	230A, 298C1

5. The window period for filing applications at Magee, Mississippi will open on **April 11, 1989**, and close on **May 11, 1989.**

6. IT IS FURTHER ORDERED, That the petition of Colon Johnson requesting the allotment of Channel 230A at Pearl, Mississippi, IS HEREBY DISMISSED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Although the counterproposal was timely filed, new communities were introduced for which neither expressions of interest nor indications that applications would be filed should channels be allotted to these communities were provided. The Appendix to the *Notice* states that an original and four copies of all comments shall be filed at the Commission and shall contain a Certificate of Service (Section 1.420 of the Rules). Only one copy of the counterproposal was received at the Commission which did not contain the required Certificate of Service. For the foregoing reasons, the counterproposal has not been accepted.

[2] BLH870909KB.

[3] The coordinates for Channel 230A at Magee are 31-52-18 and 89-43-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-36

In the Matter of

Amendment of Section 73.202(b), RM-6551
Table of Allotments,
FM Broadcast Stations.
(Savannah, Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 3, 1989; Released: February 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Columbia FM, Inc. (petitioner), seeking the allotment of FM Channel 224C2 to Savannah, Missouri, as that community's first FM broadcast service. Petitioner stated its intention to file an application for Channel 224C2 at Savannah.

2. We believe petitioner's proposal warrants consideration. Channel 224C2 can be allotted to Savannah, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 6.4 kilometers west of the community.[1] The site restriction will prevent a conflict with the allotment of Channel 222A (vacant) at Cameron, Missouri, and to the application on file at the Commission for that channel (880421MG).

3. In view of the fact that the proposed allotment could provide a first FM broadcast service to Savannah, Missouri, the Commission believes it is appropriate to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the following community:

	Channel No.	
City	Present	Proposed
Savannah, Missouri	---	224C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Columbia FM, Inc.
503 Old 63 North
Columbia, Missouri 65201

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the

channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 224C2 at Savannah are 39-57-35 and 94-54-14.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-155

In the Matter of

Amendment of Section 73.202(b), RM-6149
Table of Allotments,
FM Broadcast Stations.
(Pentwater, Michigan)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1989; Released: February 23, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 2213 (1988), proposing the allotment of FM Channel 231A to Pentwater, Michigan, as that community's second FM service. The *Notice* was issued in response to a petition filed by James J. McClusky (petitioner). Petitioner filed comments restating his interest in the allotment. No other comments were received.

2. Petitioner claims he was one of two applicants of FM Channel 276A at Pentwater and has requested the allotment of Channel 231A as a way to resolve the conflict. Petitioner's application was returned by the Commission's staff, and petitioner's request for reconsideration of that action has been denied. The other applicant for Channel 276A at Pentwater has received a construction permit. *See* BPH-850712NH; 841128MD; 840830IB. According to petitioner, since both applicants filed their applications for Channel 276A at Pentwater prior to the implementation of the Commission's fee program, for the sake of fairness the application fee should be waived for either of these applicants when filing an application for Channel 231A at Pentwater.

3. Petitioner's request for a waiver is not an appropriate matter for consideration in this proceeding. Section 1.1115 of the Commission's Rules provides that a request for waiver of the Commission's fee requirements must be submitted along with the application or filing for which the waiver is requested. *See* 47 CFR Section 1.1115 (c)(1). In view of the fact that the application for which petitioner seeks a waiver has not yet been submitted, we are unable to consider the waiver request. Petitioner may submit a waiver request with respect to his own application as part of that application. *See* 47 CFR Section 1.1115(b).

4. Channel 231A can be allotted to Pentwater, Michigan, consistent with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[1] Canadian concurrence has been obtained since Pentwater is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

5. In view of the fact that Channel 231A can be allotted to Pentwater to provide the community with its second FM broadcast service, we find the allotment to be in the public interest. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Pentwater, Michigan	231A, 276A

6. The window period for filing applications will open on **April 11, 1989,** and close on **May 11, 1989.**

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 231A at Pentwater are 43-46-30 and 86-26-24.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-334

In re Applications of

62 BROADCASTING, INC. File No. BPCT-860303KH

AIDA BARRERA File No. BPCT-860422KN

For Construction Permit
for a New Television Station
Killeen, Texas

Appearances

Joseph E. Dunne, III, on behalf of 62 Broadcasting, Inc.; *Harry F. Cole, Gene A. Bechtel, Daniel F. Van Horn*, and *Thomas Schattenfield*, on behalf of Aida Barrera; and *Norman Goldstein*, on behalf of the Chief, Mass Media Bureau.

DECISION

Adopted: January 26, 1989; Released: February 16, 1989

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN. (Board Member BLUMENTHAL issuing a concurring statement, in which Chairman MARINO joins). Board Member ESBENSEN:

1. Before the Review Board are the two remaining mutually exclusive applications of 62 Broadcasting, Inc. (62) and Aida Barrera (Barrera) seeking permission to construct and operate a new commercial UHF television facility on Channel 62 at Killeen, Texas. By *Initial Decision*, 3 FCC Rcd 4429 (1988)*(I.D.)*, presiding Administrative Law Judge Joseph Chachkin (ALJ) found Barrera unqualified to be a Commission licensee and granted the 62 application.

2. Also before the Board are the exceptions of Barrera, as well as the replies of 62 and the Commission's Mass Media Bureau. Having reviewed these documents, as well as the entire transcript and exhibits presented in the comparative hearing proceeding below, and the oral argument heard on November 18, 1988, we affirm the ALJ, except as modified herein, and grant the application of 62 Broadcasting, Inc.

BARRERA ANTENNA SITE ISSUES

3. *Background:* In addition to the standard comparative issue (including comparative signal coverage) both applicants had "air hazard" issues specified against them by the *Hearing Designation Order*, 51 Fed. Reg. 29308 (published August 15, 1986)(HDO).[1] Thereafter, in response to a Petition to Enlarge Issues filed by 62, the ALJ, by *Memorandum Opinion and Order*, FCC 86M-3569 (released December 10, 1986), added the following issues against Barrera:

> (4) To determine whether Aida Barrera had reasonable assurance of the availability of the antenna site specified in her application when it was filed, and, if not, whether Barrera is technically qualified to be a Commission licensee.
>
> (5) To determine whether Aida Barrera misrepresented facts and/or was lacking in candor in representing to the Commission that she had reasonable assurance of her specified antenna site, and the effect of the evidence adduced thereunder on the basic qualifications of Aida Barrera to be a Commission licensee.

4. Barrera had filed her application for the subject facility on the "cut-off" date established for filing competing applications: April 22, 1986 (Tr. 312; *I.D.*, para. 58). The engineering portion of Barrera's application (FCC Form 301, Section V), specified the to-be-constructed tower of KIXS-FM, Killeen, Texas as her own transmission site. As of the date of Barrera's filing, KIXS-FM was owned by Grace Broadcasting, Inc. (Grace), whose officers and directors included: Michael LaRieux, President; John Smith, Vice President; and Gerald C. Vander Sloot, Vice President and Director of Engineering (*I.D.*, para. 58). Also as of the date of Barrera's filing, Grace was well underway with its plans to construct one of the tallest broadcast towers in the United States, designed principally to support its own top-mounted FM antenna (as well as numerous two-way radio facilities at a lower level). In March 1986, Grace received a proposal from Stainless, Inc. (Stainless), a prominent tower construction company, for a tower 1863 feet above ground (with an overall height above ground, including the proposed top-mounted KIXS-FM antenna, of 1991 feet). The price of the tower, specially designed for the antennae and transmission lines noted above, and to resist a uniform wind load of 65 pounds per square foot (*sans* radial ice), was to be approximately1.4 million. The Stainless proposal specifically did not contemplate the extraordinary addition of a UHF television transmitting antenna for Channel 62 (or any other comparable facility)(62 Exh. 4).

5. Aida Barrera began her application process after initial consultation with communications counsel on April 7, 1986. (Her application was filed 15 days later, on April 22, 1986). In an initial phone conversation, Barrera and her attorney discussed the necessity for an antenna site. Counsel, on behalf of Barrera, subsequently phoned a former client to inquire into the availability of towers in the Killeen area (Tr. 503). Counsel was informed that a tall tower was anticipated in Bertram, Texas, and that he should speak with the owners of the proposed tower, KIXS-FM (Grace), to determine if there would be space available on the proposed tower for Barrera's television antenna. John Smith was identified as the person to contact (Tr. 506; Barrera Exh. 16). Counsel called Barrera, passed the information along, and advised contacting Smith to secure access to the tower (Tr. 396, 446, 503). This was the first and only antenna site ever suggested to Barrera (Tr. 458), and the only site considered by Barrera before her application was filed. Further, Barrera was aware of, and had discussed with her attorneys, the cost advantages of renting space on an existing tower rather

than constructing her own (Tr. 453). She was also aware that using an existing tower would avert the need for independent FAA clearance. Some time before the 1986 National Association of Broadcasters (NAB) Convention (which occurred between April 12 and April 16), Barrera attempted to call John Smith (Tr. 396). He later returned her call (Tr. 574). During that conversation, Barrera essentially asked Smith if she could specify the KIXS-FM antenna site in her application (Tr. 397). Barrera testified that Smith informed her that "he didn't think it was a possibility because other people had approached them to rent space on the tower and they had been turned down . . . ." (*Id.*) Smith indicated that the KIXS-FM owners and engineers were coming to Texas for the NAB convention, and suggested that she should meet and discuss the matter with them at that time (*Id.*). Barrera believes that Smith also specifically mentioned that the aforementioned Grace Vice President, Gerald Vander Sloot, would be in attendance at the convention (Tr. 440-441) (*I.D.*, paras. 61-62).

6. The *I.D.* recounts in considerable detail the recollections of various conversations between Barrera, her counsel, and various officers of Grace prior to April 18, 1986. *See I.D.*, paras. 61-75. However, much of this detail is irrelevant to our forthcoming consideration of the "reasonable assurance" aspect of Issue 4, because Barrera, through two of her counsel, has admitted that she did not possess "reasonable assurance" of the KIXS-FM proposed antenna site *at the time she filed her application on April 22, 1986* (*see* Tr. 544 and Tr. 721-722).[2] Key to our review is Barrera's application itself and her sworn site certification, and the events that transpired on April 21, 1986, the day *before* Barrera filed her application with the Commission.

7. The record discloses that Ms. Shelly Sadowsky, an associate with Bechtel and Cole (Tr. 303), was responsible for preparing the relevant portion of Barrera's application (Tr. 365). Sadowsky was instructed by Gene Bechtel to prepare Barrera's site certification, inserting John Smith's name in response to Question 2 on the site certification form that requires specific identification of the site's owner or authorized agent (Tr. 365). She was not provided with the background concerning any conversation with Smith pertaining to "reasonable assurance," other than to "put down John Smith's name there" on the site certification form (Tr. 366). Sadowsky then sent the prepared application to Barrera via Federal Express (on April 18) for Saturday delivery (Tr. 368), and Barrera received her application the next day (Tr. 415). Barrera executed the application on April 19, 1986 and returned it to counsel for filing (Tr. 416). The site certification page of FCC Form 301 had an "X" marked in the "yes" box attesting that Barrera did indeed have "reasonable assurance" of her antenna site, and identified "John Smith, Vice President and General Manager of Station KIXS-FM, Killeen, Texas" as the guarantor of her good faith "reasonable assurance" (Barrera Exh. 18). Smith, however, was not the "Vice President and General Manager of KIXS-FM, and counsel did not, in fact, know what Smith's capacity with Grace was (Tr. 550), or even where that information came from (Tr. 551)(*I.D.*, para. 76).

8. On Monday morning, April 21, 1986, Sadowsky phoned Vander Sloot in response to Vander Sloot's attempt to reach Bechtel on Friday, April 18, 1986 (Tr. 367). According to Sadowsky, Vander Sloot made it clear that *he alone* had the authority to speak for Grace (Tr. 369). Vander Sloot told her that he had checked with Stainless concerning the possibility of mounting Barrera's antenna on the KIXS-FM tower. Stainless informed Vander Sloot that the tower could *not* support Barrera's proposed antenna without modifications costing between150,000-200,000, and that payment in that amount by Barrera, if she wished to utilize the tower, "would have to come immediately so that the tower could be ordered with those modifications" (Tr. 305). Sadowsky asked Vander Sloot if they could not work out some other arrangement at a later date after Barrera acquired her construction permit (Tr. 357-380). Vander Sloot was adamant that the money needed to be paid "up front." Vander Sloot told her that he had spoken the previous week with Neil Smith (Barrera's consulting engineer) and had told Smith that if modifications were necessary Grace would require that the money for the modifications would have to be paid before the tower was constructed. Smith had replied that he doubted whether Barrera "would be willing to pay now when her application was still a speculative venture" (Barrera Exh. 11). At hearing, Sadowsky did not recall specifically *asking* Vander Sloot if Barrera could specify the KIXS-FM tower as her antenna site (Tr. 459), but she did recall that Vander Sloot flatly *told her that "we could not specify that tower* " (Tr. 360). Sadowsky also clearly understood from the April 21 conversation that " . . . I mean, I didn't feel like I was negotiating with him in that conversation at all . . . ." (Tr. 358), and that payment of150,000-200,000 was an absolute condition precedent to any sort of agreement regarding the tower (Tr. 360) (*I.D.*, para. 11).

9. Sadowsky, immediately following her conversation with Vander Sloot on April 21, typed a memo addressed to senior counsel (Tr. 344, 357). That memo (Barrera's Exh. 11) reads as follows:

> This morning I spoke with Jerry Vandersloot [sic], the engineer at Station KIXS, Killeen, Texas. He wanted to let us know that we can not specify the tower which his station proposes to construct. He told me he spoke late last week with representatives of the company from which they intend to purchase their tower and was informed that the tower, as planned, would not be suitable for mounting a television antenna for Channel 62 without major alterations. I asked whether there was any way that we could work out an arrangement so that our client could pay for the necessary changes to the tower if she gets the license. (At this point in the conversation I was not aware that KIXS planned to construct the tower in the very near future.) He then told me that the alterations would cost in the range of150,000 to200,000. He also told me that he tried to contact Neil Smith on Friday [with] these specific dollar figures but was unable to reach him. He told me he had had a conversation [with] Neil on Thursday, in which they discussed the possibility that Aida would pay for altering the proposed tower and Neil told him that he didn't think the client would be willing to pay now when her application was still a speculative venture. Vandersloot also told me that he wants to finalize the contract for the tower so that the tower can be ordered by the end of this week. I told him that I would pass the information to the client and get back to him if I thought we could work out some arrangement with him.

10. Sadowsky then attempted to call Neil Smith to determine if he had any additional information concerning the tower (Tr. 322). Neil Smith was not available, so Barrera spoke with his colleague, Jeanne Smith, whose only previous connection with Barrera's application was essentially clerical (Tr. 295-296). Sadowsky related Vander Sloot's assertions, and Ms. Smith allegedly replied that a tower could be modified at a later date, and that there were techniques that could be used to avoid major modifications. Ms. Smith agreed with Sadowsky's request that she join a conference call to Vander Sloot (Tr. 310-311) *(I.D.*, para. 80).

11. Sometime after that conversation with Jeanne Smith, Barrera and Sadowsky talked via telephone and discussed the substance of her conversation with Vander Sloot (Tr. 306), including Vander Sloot's demand that if Barrera were to use the KIXS-FM tower site she would have to pay for the modifications to the tower in advance (Tr. 319). Sadowsky and Barrera then discussed Barrera's options, and discussed the fact that Barrera would not want to, *and indeed could not*, come up "with that amount of money quickly" (Tr. 319-320). Sadowsky explained "reasonable assurance" to Barrera, but did not discuss the consequences if the site certification question response was changed from "yes" to "no", or simply left blank (Tr. 372-373). Barrera testified that she was shocked at Vander Sloot's demand to pay all of the money in advance (Tr. 417), and momentarily considered getting the money (Tr. 421). However, Barrera testified that she "really had to discount that as a realistic proposal because it was too risky a proposition, since I did not have a construction permit . . . " (Tr. 421). She claimed that she did not remember if Sadowsky had told her of Vander Sloot's rejection of Sadowsky's request to "work something out" after Barrera got the permit (Tr. 449), nor did she recall being told that Vander Sloot had told Sadowsky that the KIXS-FM tower could *not* be specified as her antenna site (Tr. 448). Barrera admitted, however, " *I knew that the payment of this sum was a condition to renting space on the tower* " (Tr. 448) *(I.D.*, para. 81).

12. Barrera considered Sadowsky's suggestion that the site certification in the application be modified to include the qualifying phrase "negotiations in process" (Tr. 420). Barrera authorized this approach, but said that it was to be checked with Bechtel before it was inserted in the application (Tr. 420-421). Thereafter, the actual language "negotiations are in process" was inserted on the site certification page of Barrera's application (which had been previously executed by Barrera on April 19, 1986) by the law firm on April 21, 1986 (Tr. 341). However, the "X" in the box on the certification page indicating "yes" for reasonable assurance was not deleted or changed (Tr. 342) *(I.D.*, para. 82).

13. Thereafter, some time after the conversations with Barrera, and in the early afternoon of April 21, 1986, Sadowsky (for reasons not entirely explained, though perhaps self-evident) memorialized her thoughts and misgivings concerning her conversations with Vander Sloot, Barrera, and Jeanne Smith, in a handwritten memo. That memo declares (Barrera Exh. 12):

> GAB-Aida phoned to see whether her app[lication] had arrived today as planned. (It did.) I told her about the ph[one] call from Vandersloot so she is aware that the engineering proposal is subject to change. Obviously she doesn't want to pay any money now just to secure the site on KIXS's tower. I told her that you & I might give her a call later this afternoon to discuss the matter further. I also called Smith & Powstenko to pass along what Vandersloot told me. Neil wasn't in, so I spoke with Jean who said that there are many options we could suggest as to changes in the KIXS tower (or in Aida's proposed antenna) so that Aida can use that site. She suggested that I call back Vandersloot & suggest that we agree to workout whatever tower alterations are necessary when Aida gets the license. I am reluctant to call Vandersloot back *before* filing the app[lication]. I believe that based on the conversation I had with him today, the site certification is *"still in process"* & I suggest, as a result of his call this AM, we include this lang[uage] in the site cert[ification] to avoid problems down the line.

14. Sadowsky underlined, for emphasis, the word "before," and the phrase "still in process" in her memo (Tr. 386). Sadowsky also testified as to her anxiety that day for her reluctance to call Vander Sloot: "[I] personally was very concerned about the whole process blowing up in our faces and being left without a site. I didn't know what our alternatives were . . . "(Tr. 313). She frankly acknowledged " . . . I mean, I thought we were facing a crisis here and I really didn't know what to do about it . . . "(Tr. 316), and she revealed that if " . . . we got a negative decision before we filed the application, I honestly don't know what we would have done . . . " (Tr. 316). She "really didn't know what we would have done if I had called back Vander Sloot and Vander Sloot maintained the same position he maintained . . . I mean, I don't know what to do . . . when you learn at the 11th hour that you may have a problem . . . do you just forego the opportunity if you find out that the site falls through" (Tr. 388) *(I.D.*, para. 84).

15. Sadowsky also directly expressed her fears to her superior in a conversation later that day (Tr. 327), and reiterated Vander Sloot's adamant position (Tr. 306-307). Of course, by that point Sadowsky had received an executed site certification, along with the rest of the application, from Barrera indicating that Barrera had "reasonable assurance" of the availability of the KIXS-FM tower site (Tr. 307). Counsel then discussed several options, one of which was to go back to Vander Sloot offering again to pay the money after the award of the construction permit (Tr. 308); the possibility of "getting the other applicants together and going to Grace as a group" (*Id.* ; Tr. 325-326); as well as inserting the phrase "negotiations are in process" on the site certification form (Tr. 309). Sadowsky conceded at hearing, however, that whatever "negotiations in process" were occurring at that point were with Vander Sloot, who was not identified in Barrera's certification (Tr. 372). It is claimed that the reason Smith's name was not deleted and changed before the application was filed was that "no one thought of it" (Tr. 373). The phrase "negotiations are in process" was added, according to Sadowsky, "to notify the Commission that specifics for the use of the tower site were still not nailed down . . . that they were in process" (Tr. 309). Counsel testified that the term was adapted from similar phraseology occasionally used by his firm in financial certifications to convey that "we did not have this transmitter site pinned down" (Tr. 517-518). Bechtel stated that he directed Sadowsky to change the site certification

"so that we would not be misleading the Commission that we had full reasonable assurance . . ". (Tr. 518) (*I.D.*, para. 85).

16. When asked at hearing why he represented that negotiations were "still in process" with Grace, Bechtel testified (Tr. 537-538):

> One, that we had several days in which to respond to the position and the condition that had been laid down by Mr. [Vander Sloot]; based upon my experience in transmitter site and other cases where when someone gives you a firm position and a date to comply, sometimes they can be talked out of it and you work a different deal with them; based upon my surprise that this particular condition which was at odds with my experience throughout the years where there were ways and means of handling paying for your facility going on a tower without having to do it up front so quickly; based upon my feelings that if Neil Smith could talk to this engineer, engineer-to-engineer, there was a possibility that there could be some way to alleviate this payment; and I also had the idea of actually trying to come back with an ability to deliver the money or to deliver financing and payment of the cost of financing by all the applicants. So I felt in my own mind there were ways to go and that this negotiation which had started out favorably in our view and had now taken this unexpected turn still had not ended.

17. Sadowsky did not attempt to reach Vander Sloot between April 21 and April 25 (Tr. 323, 362), although she claims that her procrastination was not due to the fear that he would again flatly reject the "counter offer" "(Tr. 324-325). Sadowsky admitted, however, "[t]hat was going through my mind (Tr. 325). She did try to reach Vander Sloot on April 25, 1986; however, he was unavailable (Tr. 290, 362). When Sadowsky reached Vander Sloot on April 28, Ms. Smith was also on the line. Sadowsky related again her client's offer to pay the150,000-200,000 at the time the application was granted. Sadowsky invoked Ms. Smith's assurance that it was "technically feasible" to modify Grace's tower to accommodate the Barrera antenna *after* erection (Tr. 329). Vander Sloot's reaction was "very negative. . .I don't know if he said 'no way,' but we felt very strongly that we weren't going to get very far with him on getting leased space" (Tr. 292). Vander Sloot understood Barrera's reluctance as "reasonable" and testified that he did not expect a favorable response to his demands (Tr. 655). Vander Sloot expressed no interest whatever in Barrera's proposal to pay for the modifications at a later date (Tr. 330, 656). Neither Sadowsky nor Mrs. Smith revealed to Vander Sloot that Barrera's application had *already* been filed with the Commission specifying the KIXS-FM tower (Tr. 301, 308). Following that April 28 conversation, Sadowsky and Smith found no further purpose in talking with Vander Sloot, and agreed that it would be necessary to obtain a new antenna site (Tr. 331-332, 521-522) (*I.D.*, paras. 92-93).

18. Thereafter, Sadowsky and Smith advised Barrera that Vander Sloot's position was adamant and final (Tr. 423), and that it was recommended that Barrera obtain a new antenna site (Tr. 331-332). Notwithstanding, neither Barrera nor her counsel informed the Commission that she was no longer specifying the KIXS-FM site set forth in her application (Tr. 540). Bechtel could not testify as to reasons for that, except for his speculation that he "believed" that a "B cut-off" amendment would be forthcoming soon, and did not apprehend the loss of Barrera's site as a reportable event or separate item (Tr. 561-563). A new site was specified in Barrera's "B cut-off" amendment filed on June 5, 1986 (*I.D.*, para. 94).[3]

19. After considering this background, the ALJ concluded that since Barrera did not have "reasonable assurance" at the time she filed her application, she had "no right to file a curative amendment" and, thus, under Issue 4, Barrera was technically unqualified to be a licensee (*I.D.*, para. 110). Further, the ALJ also disqualified Barrera, pursuant to Issue 5, for misrepresentation and a lack of candor with respect to her initially proposed transmitter site. *I.D.*, paras. 112-122. In her exceptions, Barrera here claims (1) that even though her initial site was never available to her, her specification of a new site at the "B cut-off" date rendered her "technically qualified"; (2) that she did not misrepresent anything in her tower site certification, nor did she lack candor with the Commission, because "a caveat was added to the certification form ['negotiations are in process'] to advise the Commission that negotiations . . . were then in process" and that such negotiations "were to continue after the filing of the application;" and (3) that there is no direct Commission precedent requiring her disqualification.

20. *Discussion: Issue 4 (Transmitter Site)*: As indicated, Barrera has admitted, both at hearing and again at oral argument, that she did not possess "reasonable assurance" of her proposed transmitter site at the time she filed her application. (*See* para. 6, *supra*). Barrera claims, however, that the Commission's rules should allow her, under the circumstances present here, to amend her application to specify a new site "as a matter of right" until the specified "B cut-off" date. Like the ALJ, we do not share Barrera's loose interpretation of either the Commission's application or site certification requirements.

21. In establishing the new site certification form to be appended to FCC Form 301, the Commission declared in its *Order (In the Matter of Amendment of Sections 73. 3572 and 73. 3573 Relating to Processing of FM and TV Broadcast Applications)*, 58 RR 2d 776, 782 (1985)(emphases added; footnote omitted):

> [S]ite availability certification [should] be utilized to deter speculative applications . . . . The Commission has held that although an applicant need not necessarily go as far as to demonstrate absolute assurance, an applicant should be able to show some reasonable assurance that the site for each proposed transmitting antenna is available. *A mere possibility that a site will be available is not sufficient. William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424 (Rev.Bd. 1974). *Commission requirements will be satisfied when an applicant has contacted the property owner or owner's agent and has obtained reasonable assurance in good faith that the proposed site will be available for the intended purpose.* Therefore, we are adding a question to FCC From 301 which will require an applicant to *certify* that reasonable assurance has been obtained from the property owner that the site will be available. In the interim, before the changed Form 301 is available, applicants should attach such certification to the old form. The certification will include a reference to the name

> and telephone number of the person contacted. This additional step simply requires verification of our current policy and will aid in deterring frivolous applications that frustrate our processing goals.

22. In adopting the specific disclosure requirement pertaining to site certification, the Commission was aware of chronic problems concerning the securing of "reasonable assurance" of alleged tower sites. While some latitude is afforded such "reasonable assurance" (*e.g.*, the applicant need not necessarily own the proposed site, nor even pay a significant consideration to purchase or lease in the future, and may even work out the exact terms for lease or ownership at sometime in the future, *see National Innovative Programming Network, Inc.*, 2 FCC Rcd 5641 (1987)), the Commission's "reasonable assurance" standard remains firm. *See Dutchess Communications Corp.*, 101 FCC 2d 243 (Rev. Bd. 1985); *Shoblom Broadcasting, Inc.*, 93 FCC 2d 1027 (Rev. Bd. 1983), *rev. denied*, FCC 84-119, released April 2, 1984, *aff'd mem. sub nom. Royce International Broadcasting Co. v. FCC*, 762 F.2d 138 (D.C. Cir. 1985)(table), *cert. denied*, 474 U.S. 995 (1985). It is is patent that an applicant must possess *a good faith* "reasonable assurance" of the proposed site at the time of filing its application.

23. Next, the Commission's Rules are equally explicit regarding the acceptance of applications for filing and processing. Section 73.3564 of the Rules, 47 CFR §73.3564 (*Acceptance of Applications*), provides in subsections (a) and (b) as follows:

> (a) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for low power TV, TV translator applications and non-reserved band FM (except for Class D) applications, those found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, the applicant will be required to supply the missing information. Applications that are not substantially complete will be returned to the applicant . . . .
>
> (b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review by the FCC's administrative staff as to completeness. Such acceptance will not preclude the subsequent dismissal of the application if it is found to be patently not in accordance with the FCC's rules.

Additionally, Section 73.3566(a) of the Rules, 47 CFR §73.3566(a) (*Defective Applications*), provides:

> (a) Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed . . . .

Thus, at a minimum, if an applicant does not possess a good faith "reasonable assurance" of a transmitter site, it is generally at risk of having its application returned as patently defective. *See* para. 24, *infra*. For, "[i]t is elementary that a prospective construction permittee must have, if little else, an antenna site, a technical keystone of the broadcasting operation". *South Florida Broadcasting Co., Inc.*, 99 FCC 2d 840, 842 (Rev. Bd. 1984).

24. Because Barrera, in essence, claimed that the Commission's amendment rules are ambiguous, we requested the Mass Media Bureau to submit a statement concerning its procedure for processing broadcast applications as it relates to site certifications (or lack thereof). By letter dated December 8, 1988, the Bureau responded:

> The Mass Media Bureau Video Services Division relies upon current Commission policy and precedent to determine whether "reasonable assurance" exists as to the availability of a site for a TV broadcast facility. In the case of mutually exclusive applications, [1] if it appears from the totality of an application that there is an available site for which engineering specifications have been provided, and the person with authority over the site has been identified, the application is accepted for filing and no issue is specified. [2] If engineering specifications are lacking so that it is not possible to process the application, the application is returned as unacceptable for filing. [3] However, on occasion, engineering specifications are provided so that it is possible to process the application, but it is not possible to determine that there is reasonable assurance as to the availability of the site. On such occasions the application will be accepted for filing and the Hearing Designation Order will order the applicant to file a certification with the Presiding Judge by a specific date. The Judge is authorized to specify an appropriate issue if the certification is not timely provided.

25. Here, the Bureau apparently processed Barrera's application under scenario [1] above. Barrera's site certification page clearly had the "yes" box checked in response to Question 1, and the identity, address, and telephone number of the person with the purported authority to grant "reasonable assurance" was disclosed in response to Question 2. Barrera's vague caveat ("negotiations are in process") made it not unreasonable for the Bureau not to penetrate Barrera's affirmative site certification. Obviously, the artful phrase "negotiations are in process" might be interpreted to mean no more than that Barrera was attempting to clear up a few loose ends, though the substantive accord existed. *See, e.g., National Innovative Programming, supra*. Since Barrera admits that she possessed no "reasonable assurance" whatsoever at the time she filed her application, the FCC Form 301, Section V, engineering data was incorrect on its face and entirely moot. Of course, had Barrera been fully candid with the Commission and withheld the Section V engineering data, the Bureau's scenario [2], above, would have been triggered, and Barrera's application returned. *See* 47 CFR §§73.3564 and 73.3566(a), *supra*. Obviously, this highly undesirable result was apparent to Barrera and her counsel, and was the probable basis for the last-minute machinations involved herein. With respect to Barrera's

contention, in essence, that the Bureau should have been alerted by the caveat and added a "site availability" issue (or simply required the submission of additional information) in the HDO, thus allowing Barrera time to amend her application (*see* Bureau scenario [3], *supra*), we disagree.[4] Barrera's original site certification apparently achieved the precise result Barrera sought: Commission acceptance and processing of her application, based upon extensive engineering data entirely academic at the time of filing.

26. Therefore, we concur with the ALJ that, while Barrera is correct that television applicants with substantially complete applications may amend as a matter of right before the "B cut-off" date (*see, e.g. James River Broadcasting Corp.*, 399 F.2d 581 (D.C. Cir. 1968)), applicants with substantially incomplete and defective applications may not submit curative amendments "as a matter of right" prior to the "B cut-off" date. *Henry M. Lesher*, 67 FCC 2d 278 (1977); *Voice of Information*, 27 FCC 2d 723 (1971). As the Commission succinctly declared:

> . . . Commission policy has consistently required that, where a cutoff period is established, applications must be submitted in substantially complete form before the cutoff date to be entitled to comparative consideration [footnote omitted]. As a corollary to that policy, curative amendments submitted after the cutoff date generally have not justified reinstatement of an application that was not substantially complete as of the original date of filing . . . .

Advance, Inc., et al., 88 FCC 2d 100, 107 (1981), *recon. denied*, 89 FCC 2d 177 (1982). *Accord Colorado Television, Inc.*, 98 FCC 2d 513, 515 (Rev. Bd. 1984), *rev. denied*, FCC 85-437 (released August 6, 1985), *appeal dismissed*, 801 F.2d 1436 (D.C. Cir. 1986). "Past and recent Commission precedent establish that an applicant must have reasonable assurance that its transmitter site is available at the time its application is either filed or amended. *See Alden Communications Corp.*, 59 RR 2d 259 (Rev. Bd. 1985)". *George Edward Gunter*, 104 FCC 2d 1363, 1364 (Rev. Bd. 1986). Further, Barrera's "fatal admission" that she had no understanding with, or good faith reasonable assurance from, the owner of the site she specified in her application:

> . . . establishes that it is not a basically qualified applicant . . . since the law is clear that 'an applicant will not be permitted to amend where it did not have the requisite reasonable assurance to begin with . . . ' *South Florida Broadcasting Co.*, 99 FCC 2d 840, 845 n. 12 (Rev. Bd. 1984).

Classic Vision, Inc., 104 FCC 2d 1271, 1273 (Rev. Bd. 1986), *review denied*, 2 FCC Rcd 2376 (1987).

27. Therefore, we concur with the ALJ that Issue 4 must be resolved against Barrera. Her application was substantially incomplete and patently defective since she did not, as she admits, possess reasonable assurance of a transmitter site at the time she filed her application. Barrera knowingly filed an incomplete application containing a cryptic caveat as a "place holder" so as to avoid missing an explicit filing deadline. As we opined in *Houston Family Television, Ltd.*, 101 FCC 2d 661, 664-665 (Rev. Bd. 1985):

> The specification of a transmitter site in an application or amendment is an implied representation that the applicant has obtained reasonable assurance that the site will be available. *William F. Wallace*, 49 FCC 2d 1424, 1427, 32 RR 2d 105, 109 (Rev. Bd. 1974). An applicant need not have a binding agreement or absolute assurance, but a mere possibility, assumption, or hope that the site will be available will not suffice. *Id.*; *Shoblom Broadcasting, Inc.*, 93 FCC 2d 1027, 53 RR 2d 1203, and 95 FCC 2d 444 (Rev. Bd. 1983), *rev. denied*, FCC 84-119 (Comm'n 1984), *aff'd per curiam sub nom. Royce International Broadcasting Co. v. FCC*, Case No. 84-1168 (D.C. Cir. April 30, 1985) . . . .Thus, [the applicant's] application [before the Board] is now substantially incomplete and patently defective since it lacks a viable transmitter site. *Shoblom Broadcasting, Inc.*, *supra*.

Thus, we hold that Barrera had no right to file a "curative" amendment on the "B cut-off" date proposing a different transmitter site. Her application was no doubt accepted and processed *only* because of her cryptic response to the site certification form appended to FCC Form 301 on the original date of filing, as well as full and complete engineering data based upon a site that was unavailable. Barrera is therefore unqualified to be a licensee and her application must be denied.

28. *Issue (5) (Lack of Candor / Misrepresentation):* As set forth above, Barrera's last-minute insertion of the vague phrase "negotiations are in process" was an attempt, Barrera claims, "to avoid problems down the line" (Barrera Exh. 12) and to avoid "misleading the Commission that we had full reasonable assurance" (Tr. 518; para. 15, *supra*). However, the totality of facts and circumstances on this record suggests that Barrera's actions were artfully designed to (1) avoid return of her application; or (2) avoid the addition of a site availability issue; or (3) avert a charge of misrepresentation. Disclosure of the facts actually *known to Barrera* on the very date on which she filed her application would have ineluctably revealed that she had filed under false colors.

29. An applicant's obligation to be completely candid with the Commission, especially now when the Commission places heavy reliance on self-certification rather than documentation, is clear. As we have stated:

> The Commission must rely on the absolute candor of applicants –more so now than ever because our license application forms rely increasingly on bare representations and less on documentation, *see Revision of Application for Construction Permit for Commercial Broadcast Station*, 50 RR 2d 381 (1981).

Superior Broadcasting of California, 94 FCC 2d 904, 909 (Rev. Bd. 1983). Earlier, in *Fox River Broadcasting, Inc.*, 88 FCC 2d 1132, 1137 (Rev. Bd. 1982), *modified on other grounds*, 93 FCC 2d 127 (1983), the Board recalled the Court's admonition in *Lorain Journal Co. v. FCC*, 351 F.2d 824, 830 (D.C. Cir. 1965): " . . . [i]t does not seem

too much to ask that federal licensees be *scrupulous in providing complete and meaningful information* provided for in forms and regulations".

30. Lack of candor may result in the disqualification of applicants and the denial of applications for broadcast licenses. *See Las Americas Communications, Inc.*, 1 FCC Rcd 786, 790-791 (Rev. Bd. 1986)(a "candorless coverup"); *Mid-Ohio Communications, Inc.*, 104 FCC 2d 572, 598-599 (Rev. Bd. 1986); *Washington's Christian Television Outreach*, 99 FCC 2d 395, 400-401 (Rev. Bd. 1984), *modified on other grounds*, 59 RR 2d 787 (1985), *recon. denied*, 59 RR 2d 1679 (1986), *aff'd by judgment*, No. 85-1649 (D.C. Cir. December 17, 1987); *Old Time Religion Hour, Inc.*, 95 FCC 2d 713, 719-723 (Rev. Bd. 1983), *recon. denied*, 96 FCC 2d 551 (Rev. Bd. 1985), *review denied*, 57 RR 2d 1147 (1985)(disqualification for candorless testimony before ALJ). For a more complete discussion of a licensee's duty of absolute and timely candor, see the Court's rehearsal in *RKO General, Inc. v. FCC*, 670 F. 2d 215 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982). *See also Character Policy Statement*, 102 FCC 2d 1179 (1986). Under the facts of this case, it is exceedingly close as to whether Barrera's failure to advise the Commission until June 5, 1986 that she had no "reasonable assurance" of the KIXS-FM tower site at the time she filed her application, and that no negotiations toward that site were, in fact, viable, is so pronounced as to be disqualifying for a lack of candor. *Compare Broadcast Associates of Colorado*, 104 FCC 2d 16 (1986)(improper application certification and inaccurate deposition testimony insufficient to warrant disqualification) *with San Joaquin Television Improvement Corp.*, 2 FCC 2d 7004 (1987)(case remanded on allegations of candorless testimony). Because the possession of a transmitter site, and the concomitant engineering calculations tied to that *precise* site (and no other) are so central to the application process (particularly to alert the Commission and existing licensees to any potential electrical interference), we believe that Barrera's actions should not be countenanced, lest we encourage other applicants to follow suit. Very scarce public resources cannot be squandered on the processing and examination of *hypothetical* engineering exhibits premised entirely upon a wholly *speculative* transmitter site. Or, *a fortiori* as with Barrera here, a site she well knew was not hers to claim. Because we have affirmed her disqualification under the basic site availability issue, we need not formally rule on her exceptions to her disqualification under Issue 5. *Duchess Communications, supra*. For that, Barrera might be relieved.

COMPARATIVE CONSIDERATIONS

31. Although Barrera has been disqualified in this proceeding, we will briefly address the comparative considerations herein, and concur with the ALJ that, even if Barrera were basically qualified, 62 would still prevail (*I.D.* at paras. 123-126).

32. Barrera claims in her exceptions that (1) 62 should receive no integration credit whatsoever, essentially because of the activities of Mr. Beck, husband of the principal 62 shareholder, Eula Lee Beck; (2) she (Barrera) is entitled to full credit for local residence; and (3) 62's preference for first service to "white" areas and second service to "grey" areas should not be awarded because these areas purportedly already receive television service from translators and/or low power television facilities.

33. Barrera's claim that 62's proposal is a "sham" and that Mr. Beck is in control is rejected. Barrera's contention rests solely on speculation and surmise. Barrera has offered no probative evidence that Mr. Beck has controlled 62's application. Rather, the unrebutted evidence demonstrates that the shareholders of 62 have been solely responsible for planning and prosecuting its application. No evidence in the record demonstrates that Mr. Beck was involved in the preparation of the application; that he attended any meetings of the shareholders or principals; that he spoke with any of 62's engineering or legal consultants; or that Mr. Beck was involved in any aspect of application prosecution. (*I.D.*, para. 124). To discredit 62's ownership/management integration proposal would require the Board to make findings directly contrary to the unrebutted record evidence. We concur with the ALJ that 62's integration proposal must be fully sustained.

34. Both 62's and Barrera's integration proposals are qualitatively enhanced. 62 is further enhanced by its 49% minority ownership and 51% female ownership. Also, 62's principals are entitled to credit for long time local residence and substantial civic involvement. Barrera's application would have been enhanced by her status as an Hispanic female. Barrera's residence in Jolleyville qualifies under the local residence criterion because it is within the service area. However, because her residence is some 65 miles from Killeen, and in an entirely different television market, such credit would be somewhat diminished. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 396 (1965)("residence in the principal community to be served will be of primary importance, closely followed by residence outside the community, but within the proposed service area"). Thus, we generally concur with the ALJ that Barrera and 62 would have been rated equal under the ownership/management integration criterion.

35. We also concur with the ALJ that 62 holds a clear superiority under the comparative signal coverage criterion. 62's provision of a first service (3,408 people) and a second service (810 people) warrants a very strong comparative preference. *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, *recon. denied*, 3 FCC Rcd 5631 (Rev. Bd. 1988); *see Sixth Report and Order on Television Allocations*, 41 FCC 148 (1952).

36. In so holding, we agree with the Mass Media Bureau that Barrera's exceptions in this regard (pertaining to the availability of translator and low power television facilities in the "white" and "grey" areas) should be rejected. Barrera acknowledges that, to date, the Commission has declined to consider the availability of translator and other such services to "white" and "grey" areas in comparative television proceedings; however, Barrera argues that Commission precedent established in *Daytona Broadcasting Company, Inc.*, 97 FCC 2d 212 (Rev. Bd. 1984), *modified*, 101 FCC 2d 1010 (1985), *on reconsideration*, 103 FCC 2d 931 (1986), and in *Apogee, Inc.*, 59 RR 2d 941 (1986), should not govern the instant proceeding. Despite this, Barrera argues that *Daytona* and *Apogee* provide no indication that the Commission had before it in those cases evidence as to the availability of other services, whereas in the instant case that information is available. Citing the *Report and Order in Low Power Television and Television Translator Service*, 2 FCC Rcd

1278 (1987). Barrera submits that the adoption of regulations to guard against pre-emption of television translator and low power television services undermines the Commission's rationale for excluding consideration of such services in comparative settings. Finally, citing *Notice of Inquiry In the Matter of Compulsory Copyright License for Cable Retransmission*, 2 FCC Rcd 2387 (1987), Barrera argues that the Commission has accelerated its willingness to reconsider traditional regulatory positions in light of the vast changes that have occurred in the availability of translators, low power television services, and other television delivery systems. Barrera concludes that it was error to disregard "alternative" video services in the evaluation of the comparative coverage of the applicants.

37. Barrera's policy arguments are beyond the Board's delegation. In *Apogee, supra*, the Commission clearly distinguished station relocation situations from comparative proceedings for a new television station where applicants propose new over-the-air service. In rejecting alternative services in comparative proceedings, the Commission held that "comparative coverage questions involve no 'loss of service' issues and the Commission routinely considers the relative benefits of the different coverage proposals." 59 RR 2d at 945. *See also Daytona Broadcasting Company, Inc.*, 103 FCC 2d at 935 n. 7; *Vela Broadcasting Co.*, 2 FCC Rcd 3663 (Rev. Bd. 1987). Similarly, Barrera's reliance on the Commission's *Report and Order (Low Power Television), supra*, is also unavailing; that report does not alter the *secondary* nature of television translators and low power television services. These subordinate services must desist from interfering with television services and with land mobile radio operations subsequently authorized. *Report and Order, supra*, at 1279. Finally, Barrera's citation of the *Notice of Inquiry (Compulsory Copyright License), supra*, is inapposite. That *Notice* deals with compulsory copyright licenses and not with consideration of alternative services in comparative broadcast licensing proceedings. More importantly, Notices of Inquiry are not binding, definite, or entitled to legal weight in other proceedings. *See Beaufort County Broadcasting Co. v. FCC*, 787 F.2d 645, 649 n. 2 (D.C. Cir. 1986)(reliance on policy proposals "not yet adopted" is "frivolous").

38. In sum, Barrera is the comparatively inferior applicant. Thus, even if she were found to be qualified to be a Commission licensee, she could not prevail in this proceeding. Of course, Barrera has been determined to be unqualified herein; thus, 62, as the only fully qualified applicant, will receive the construction permit at issue.

39. ACCORDINGLY, IT IS ORDERED, That the "Motion to Strike Brief and Exceptions of Aida Barrera" filed on August 29, 1988 by 62 Broadcasting, Inc.; and the opposition thereto, and the "Request for Permission to Submit Appendices to Briefs" filed on September 1, 1988 by Aida Barrera ARE DISMISSED as moot; and

40. IT IS FURTHER ORDERED, That the application of Aida Barrera (File No. BPCT-860422KN) for construction permit for a new UHF television facility at Killeen, Texas IS DENIED and the application of 62 Broadcasting, Inc. (File No. BPCT-860303KH) for that same facility IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] By *Order*, FCC 87M-087 (released January 13, 1987), the ALJ favorably resolved the "air hazard" issues with respect to both applicants. These rulings are unchallenged.

[2] During the hearing proceeding below, counsel for 62 questioned Barrera's counsel as follows (Tr. 544):

> [MR. DUNNE]: When [Barrera's] application was filed on April 22nd, did you believe that you had reasonable assurance of the availability of the KIXS site for Miss Barrera's application?
>
> [MR. BECHTEL]: No sir, not as defined by the FCC.

At oral argument, the following colloquy occurred (Tr. 722):

> [BOARD MEMBER]: . . . Mr. Van Horn, I thought, was quite candid in saying that his argument here today is not based on a contention that there was reasonable assurance . . .
>
> [MR. VAN HORN]: There clearly wasn't.

[3] It is noteworthy that Barrera made no timely attempt to notify the Commission of her loss of transmitter site. Even assuming, *arguendo*, that the loss occurred as Barrera claims, on April 28, 1986, the only notice to the Commission was Barrera's June 5, 1986 amendment specifying a new site. At no time was there an affirmative showing made (within 30 days pursuant to Section 1.65 of the Rules, 47 C.F.R. §1.65) of Barrera's site loss. We further note that in her amendment, as filed June 5, 1986, Barrera proposed an entirely new tower to support the transmitting antenna of her facility. This tower, which was proposed to be 610 meters (or *2000 feet*) above ground (including obstruction lighting at the top of the antenna) would have been one of the tallest antenna structures in the country. Just how Barrera would have paid for this structure (the KIXS-FM tall tower was expected to cost approximately1,400,000.00, see para. 4, *ante;* 62 Exh. 4) and the acquisition costs for the significant amount of land required to erect such a structure (in addition to her existing costs of construction and operation) in light of her inability to quickly "come up with" the comparatively modest150,000-200,000 required to modify the KIXS-FM tower *(see* para. 11, *ante;* Tr. 319-320), raises rather glaring questions. Thus, even if we were to give Barrera the benefit of the doubt on the Grace site at the time she first proposed that site (and find her qualified), we would no doubt remand this proceeding with an appropriate financial issue with respect to Barrera's second site.

[4] In further support of this position, Barrera submitted copies of twenty-one Hearing Designation Orders (HDO's), involving twenty-six applicants, in which the following identical lanaguage was included by the Bureau:

> On June 26, 1985 the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. [The applicant here] has not submitted such a certification. Accordingly [the applicant] will be given 20 days from the release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, he shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

Of the twenty-six referenced applicants, twenty-one had filed their applications before, or within 60 days of release of, *the Public Notice, supra*. Thus, this flurry of activity all occurred, principally, with respect to applicants who had filed before adoption of the site certification requirement, or who had not been aware of the certification requirements (it may be posited), or before the form was incorporated into FCC Form 301. However, had Barrera here been granted additional time in the HDO for additional responses (which she was not), or time for leave to amend, this proceeding would have produced the same result: The disqualification of Barrera for lack of a viable transmitter site. Barrera never possessed "reasonable assurance," and thus, could not demonstrate "good cause" for an amendment to a new site. Nor could she "recertify" her application.

CONCURRING STATEMENT of BOARD MEMBER NORMAN B. BLUMENTHAL in which BOARD CHAIRMAN MARINO JOINS

Anent the disqualification of the losing applicant in this case, a few afterthoughts.

The key issue before the ALJ and the Board appeared -- at first blush -- childishly simple: *Must a broadcast applicant have "reasonable assurance" of a transmitter site when -- in bona fides -- it certifies under penalty of perjury in the affirmative on an FCC application form?*

At bar, Barrera unbashedly concedes that it had none; that although it knew beyond peradventure, at least by April 28, 1986 (six days after its application filing), that its site certification was "inoperative," it did not within Section 1.65's 30-day notice period fully advise the Commission of its critical deficiency; but that, it was entitled "as a matter of right" until the "B" cut-off date to forage and substitute. It does not, nor could it, claim surprise that its certified site was unavailable.

Board Member Esbensen, for a unanimous panel, has cogently explained what we believe self-evident: (1) FCC Form 301 calls for a sworn *attestation* of site assurance, not an improbable speculation; (2) the exacting engineering calculations attending a *precise* site location are absolutely pivotal to the entire broadcast application process, and neither the FCC, nor interested broadcasters, nor competing applicants should be put to the frivolous burden of closely analyzing complex technical calculations for a transmitter site an applicant knows full well to be fictitious; and (3) the Commission's "reasonable assurance" standard, relaxed as it occasionaly appears *(see National Innovative Programming, ante* para. 22), is not yet a sly "wink".

Despite what appears to us and the ALJ as "obvious," [1] and try as it might, the Board could not extrude from the Mass Media Bureau its policy as to whether a broadcast applicant truly must have "reasonable assurance" of a transmitter site when it files, and affirmatively so swears or whether -- as Barrera contends -- it may fudge the application and drop in a new site (with altogether new engineering calculations) at the "B" cut-off date, much later on down the line. *See* Tr. of Oral Arg. of November 18, 1989 at 759-766. [2] Still, if the Bureau responsible for devising its application rules and implementing its processing policies will not emit an unambiguous "yes" or "no" to this most basic inquiry, should an applicant be more certain? *But cf. P&R Tremmer v. FCC*, 743 F.2d 918, 931 (D.C. Cir. 1984)(reliance on FCC staff action cannot overcome rule); *Reuters Ltd. v. FCC*, 781 F.2d 946, 950-951 (D.C. Cir. 1986)(FCC must adhere to its own rules and regulations; ad hoc departures from those rules cannot be sanctioned).

We assume that had Barrera fully explained the facts adduced at hearing when it filed on April 22, 1986, its application would have been summarily returned for failure to be "substantially complete." 47 CFR §73.3564; *see also id.* at §73.3566. If not, then what does that term mean?

It has been bruited that the comparative hearing process is "cumbersome," entertaining -- as here -- spirited litigation over a matter that should be apodictic. However, if -- after more than 70 years of receiving broadcast applications -- we must yet debate the basal question of whether an applicant must *first* have secured a transmitter site, without which nicety all else is moot, then any "cumbersomeness" is not wholly the fault of litigious applicants, crafty lawyers, or the devil himself. As they say, "the fault, dear Brutus . . . " is plainly in ourselves.

FOOTNOTES TO CONCURRING STATEMENT

[1] In a legendary cookbook, a "typically British" epicurean commences his recipe for rabbit stew this way: "First you catch a rabbit." Perhaps our application rule writers could use this recipe -- as an analog, of course -- so as to spare unnecessary stewing.

[2] The best we could extract (witholding the bamboo shoots) was:

> BOARD QUESTION: Are we, then, to assume that when the processing line reviews the engineering portion of the application, it presupposes that there is reasonable assurance of the site which reflects that engineering?
>
> BUREAU COUNSEL: I don't know that you could come to that conclusion because then they wouldn't allow the anomalous situation of allowing the reasonable assurance certification to be made subsequent.

Id., at 761-762. The exchange continued (id., at 763):

> BOARD QUESTION: Are you arguing or do you suggest, then, that an applicant need not have reasonable assurance of a transmitter site when they file their application?

> BUREAU COUNSEL: What I am telling you is that if one looks at the process that is followed, an applicant who includes an engineering showing in his application, the application is deemed acceptable. And then there is -- if the site certification indicating that there is reasonable assurance is not given, if one looks at designation orders -- and they are provided in great abundance, I believe, by one of the parties in this proceeding -- there is a period of time during which that assurance can be provided by providing a site certification. So I do not think that the process that is followed enables me to give an objective answer to the question which you're raising.

We do not necessarily fault Bureau counsel for what former Treasury Secretary Michael Blumenthal once called "manfully waffling." It is no fault of counsel if Bureau policy and practice is the stuff of lore - not law.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-104

In the Matter of

Waiver of Access Billing
Requirements and Investigation
of Permanent Modifications

ROCHESTER TELEPHONE
CORPORATION

Petition for Waiver

MEMORANDUM OPINION AND ORDER

Adopted: February 2, 1989; Released: February 23, 1989

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On March 21, 1988, the Rochester Telephone Corporation (Rochester) filed a petition for waiver of requirements set forth by the Commission in an Order released in the above-captioned proceeding.[1] The *July 31 Order* adopted recommendations for meet point billing proposed by the Meet Point Billing Task Force of the Exchange Carrier Standards Association, Inc. (ECSA). Furthermore, the Commission established requirements that were consistent with the ECSA recommendations. No pleadings have been filed opposing Rochester's petition.

II. BACKGROUND

2. The Commission and the Common Carrier Bureau have considered meet point billing questions on various occasions since 1983,[2] when the first access tariff filings contained two optional provisions covering the billing of access services provided by more than one carrier. The first option, single company billing, essentially required interexchange carriers (ICs) to order service from the local exchange carrier (LEC) in whose territory the end user serving office associated with the IC's point of presence (POP) was located. That LEC would then determine the charges, arrange to provide the service, perform the billing from its own tariff for the complete service provided, and settle accounts with the other LECs involved in providing that service. The other option, meet point billing, required the LECs involved to divide ordering, rating, and billing services on a proportional basis, so that each carrier would bill under its own tariff.[3]

3. In 1984, the Commission required carriers to delete the first option from their tariffs, because it effectively allowed a carrier providing service to charge rates based on the tariff of a carrier not providing the service.[4] The cumulative effect of three subsequent Bureau Orders was to delay implementation of this requirement until January 1, 1988.[5] These Orders concluded that the technical and administrative difficulties of implementing meet point billing outweighed any harm that might be caused by use of single company billing for a limited period.

4. In addition, the *March 28 Order* (the last of the three Orders) adopted an industry proposal that an *ad hoc* group be established to study alternative access billing arrangements and to submit a report of the group's investigation and findings to the Commission. In December 1986, the ECSA filed a report (ESCA Report) adopted by ECSA's Ordering and Billing Forum (OBF). The ECSA Report contained proposals for implementing meet point billing.

5. Specifically, the ESCA Report elaborated on two options -- the single bill option and the multiple bill option. The ECSA Report noted that the single bill option could take one of three forms -- single bill/multiple tariff, single bill/pass-through tariff, or single bill/single tariff. The ECSA Report concluded that all the LECs involved in providing access service for a particular meet point should agree on one alternative in order to implement the single bill option. In its *July 31 Order*, the Commission accepted ECSA's determination that this option, in one of its three forms, was preferable to the multiple bill option because the former enhances billing accuracy and customer verification.[6] The Commission stated, however, that it would allow continuation of the multiple bill option as a default option, in recognition of the circumstances of small LECs and LECs that had already implemented multiple bill meet point billing. The multiple bill option would also be available as a last resort if the LECs involved could not reach an agreement, but the Commission emphasized that it should be used as a default option only.[7]

6. Rochester jointly filed a tariff with various small companies, including Ogden Telephone Company (Ogden) and Seneca-Gorham Telephone Company (Seneca). This tariff was filed under Section 69.3(e) of the Commission's Rules, 47 C.F.R. § 69.3(e), which allows a group of telephone companies to file their own access tariff. Pursuant to this rule, Rochester, Ogden, Seneca, and two other small telephone companies aggregate their costs and demand forecasts, using this information to develop uniform switched access rates in accordance with Part 69 of the Commission's Rules, 47 C.F.R. Part 69.[8] The result of this joint tariff filing is that the territories served by Rochester, Ogden, and Seneca are like "a single service area governed by a single tariff with uniform prices for services."[9]

7. Originally, Rochester interpreted the *July 31 Order* as not applying to its arrangement with Ogden and Seneca. Rochester believed the requirement only applied to meet point billing arrangements among the carriers that tariffed different charges under separate access tariffs. Rochester, Ogden, and Seneca furnish service under a single tariff with uniform charges.[10] The Bureau rejected this interpretation in a December 22, 1987, Order, ruling that all carriers must comply with the *July 31 Order*.[11] Hence, Rochester seeks a waiver of the requirements promulgated in the Commission's *July 31 Order* in order to continue its current service arrangement.

III. DISCUSSION

8. Rochester asserts that the recommendations proposed in the *July 31 Order* were meant to insure that carriers establish cost-based rates for jointly provided access service and to enable customers to verify their bills more easily.[12] Rochester further argues that its current arrangement satisfies these goals. According to Rochester, its rates are cost-based, since the data used to develop them are aggregated from all carriers filing under its tariff. Furthermore, Rochester continues, its bills are easy to verify because ICs only receive one bill for services rendered in the territories involved.[13] Finally, Rochester argues that enforcing the *July 31 Order* requirements against Ogden and Seneca would undermine the benefits of entering into voluntary pooling arrangements as encouraged by the Commission through its rules.[14]

9. We believe that Rochester has persuasively argued its case for a waiver. Rochester and the other telephone companies which file under its tariff develop their rates based on aggregated costs and demand forecasts. Customers who take service from Rochester and the other companies receive one bill from Rochester, making bill verification simple. Furthermore, Rochester correctly emphasizes that none of its customers challenged its arrangement in comments on Rochester's 1988 Annual Access Filing.[15] We therefore see no reason to deny the waiver.

IV. CONCLUSION; ORDERING CLAUSE

10. The Common Carrier Bureau has reviewed Rochester's request and we conclude that the public interest will be served by granting Rochester the waiver of the abovementioned requirements of the *July 31 Order*. We find that Rochester's current arrangement addresses the concerns expressed in that Order.

11. IT IS THEREFORE ORDERED that the petition for waiver filed by the Rochester Telephone Corporation in the captioned proceeding IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, 2 FCC Rcd 4518 (1987) (*July 31 Order*).

[2] Meet point billing is employed when access services are provided by two or more exchange carriers.

[3] *See* Access Billing Requirements for Joint Service Provision, CC Docket No. 87-579, Order Designating Issues for Investigation, 3 FCC Rcd 3568 (1988) (*Designation Order*).

[4] *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Memorandum Opinion and Order, 97 FCC 2d 1082, 1176-77 (1984).

[5] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Mimeo No. 2964, released Mar. 16, 1984 (requirement waived until June 1985); Petitions for Waiver Concerning 1985 Annual Access Tariff Filings, Mimeo No. 5007, released June 7, 1985 (waiver extended until April 1, 1986); Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, Mimeo No. 3402, released Mar. 28, 1986 (*March 28 Order*) (waiver extended until January 1, 1988).

[6] *July 31 Order*, 2 FCC Rcd at 4519.

[7] *Id.*

[8] *See* Rochester Petition at 3-4. Highland Telephone Company and Sylvan Lake Telephone Company also participate in Rochester's Tariff.

[9] *Id.* at 4.

[10] *Id.* at 6.

[11] *See* Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 87-579, 3 FCC Rcd 13, 17 n.26 (1987).

[12] *See* Rochester Petition at 7 (citing Waiver of Access Billing Requirements, CC Docket No. 86-104, Mimeo No. 3402, released Mar. 28, 1986, paras. 3-6, 8); *see also July 31 Order*, 2 FCC Rcd at 4521.

[13] Rochester Petition at 8-12.

[14] *See* 47 C.F.R. § 69.3.

[15] Rochester Petition at 9.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE SERVICE CORPORATION

Petition for Waiver Concerning
Switched 56 Digital Service

ORDER

Adopted: February 10, 1989; Released: February 14, 1989

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On November 10, 1988, GTE Service Corporation (GTE) filed a petition for waiver of Section 69.4(b) and Part 69, Subparts B, D, and E the Commission's Rules, 47 C.F.R. § 69.4(b) and Part 69, Subparts B, D, and E.[1] Waiver of these sections will enable GTE to establish a new access rate element to recover the costs of providing Switched 56 Digital Service. GTE also filed a tariff transmittal which establishes rates and regulations for the service.[2] No party has filed an opposition to the waiver request.

2. GTE seeks to provide Switched 56 Digital Service as a new optional service available to interexchange carriers (ICs). The service would enable digital transmission at 56 kbps between an IC's switch and a suitably equipped end user's premises. The service requires Feature Group D access and will only be offered at GTE's Santa Monica, California, office until customer demand increases. GTE Petition at 2. GTE contends that a separate rate element is necessary to recover the costs associated with providing Switched 56 Digital Service. The waiver is necessary because Part 69 does not provide for such a rate element. *Id.* at 3.

3. The Common Carrier Bureau has reviewed the petition for waiver and the related tariff transmittals. We conclude that GTE has satisfactorily justified its request for a separate rate element for Switched 56 Digital Service, and that it is in the public interest to grant its request. [3] GTE's establishment of a separate rate element for Switched 56 Digital Service will, consistent with Commission policy, assure that the costs associated with this service are borne by the cost-causer.

4. ACCORDINGLY, IT IS ORDERED that the petition for waiver filed by the GTE Service Corporation IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] GTE Petition for Waiver, Switched 56 Digital Service, filed Nov. 10, 1988. (GTE Petition).

[2] GTE Tariff F.C.C. No. 1, Transmittal No. 469, filed Nov. 17, 1988. On Feb. 1, 1989, GTE filed Transmittal No. 481 pursuant to Special Permission No. 89-58. That transmittal made minor modifications to the tariff as a result of conversations with Bureau staff. Neither tariff transmittal is opposed. Both transmittals are scheduled to become effective on February 15, 1989.

[3] The Bureau previously has granted similar requests for waiver to enable the establishment of separate rate elements. *See* NYNEX and Pacific Bell, Petitions for Waiver, Order, 2 FCC Rcd 2538 (1987); Mountain States Telephone and Telegraph Co., 1 FCC Rcd 526 (1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 85-49

In re Applications of

Grant Cotton *et al.*, d/b/a COTTON BROADCASTING COMPANY — File No. BPCT-841004KF

THE L BROADCASTING COMPANY — File No. BPCT-841005KR

For Construction Permit for New Television Station at Raleigh, North Carolina

MEMORANDUM OPINION AND ORDER

Adopted: February 10, 1989; Released: February 23, 1989

By the Commission:

1. This proceeding involves mutually exclusive applications for a new UHF television station on Channel 50 at Raleigh, North Carolina, filed by Grant Cotton, and others under the name Cotton Broadcasting Company and by The L Broadcasting Company (LBC). The ALJ granted LBC's application. *Cotton Broadcasting Co.*, 104 FCC 2d 479 (1986). The Review Board reversed and granted Cotton's application. *Cotton Broadcasting Co.*, 104 FCC 2d 473 (1986). Now before the Commission are an Application for Review filed August 30, 1986 by LBC; a Contingent Application for Review filed August 22, 1986 by Cotton; and Oppositions filed September 8, 1986 by LBC and Cotton, respectively.

2. Also before the Commission are a Motion for Leave to File Supplement and a Supplement to Application for Review filed February 24, 1987 by LBC, and Opposition filed March 4, 1987 by Cotton. In addition, the Commission has under consideration a Petition for Leave to Amend filed July 22, 1988 by LBC and a Partial Opposition to and Comments on Petition for Leave to Amend filed August 2, 1988 by Cotton; and a Petition for Leave to Intervene, filed July 26, 1988 by Reno-Eleven Telecasters and an Opposition to Petition for Leave to Intervene, filed August 4, 1988 by Cotton. We will grant review to modify the treatment accorded limited partnership ownership interests by the Review Board.

I. INTEGRATION OF PARTNERS WITH BOTH GENERAL AND LIMITED INTERESTS

3. In *Daytona Broadcasting, Inc.*, 103 FCC 2d 931 (1986), we applied our ownership attribution policies to limited partnerships in comparative proceedings and specifically addressed the treatment of insulated interests. Here again, we examine the attributable interests of limited partners. LBC is a limited partnership with three general partners, each of whom owned 10 percent of LBC's total equity on the B cutoff date. One general partner, Evelyn J. Barber, also owned 70 percent of LBC's equity as a limited partner. Section 6 of LBC's limited partnership agreement provides:

> The General Partners shall have complete and exclusive control over the management of the Partnership business and affairs. The Limited Partners shall have no right to participate in the management or conduct of the Partnership business or affairs nor any power of authority to act for or on behalf of the Partnership in any respect whatever.

Cotton Ex. 6 at 3. The Board said that the partnership agreement is "self-contradictory" because "it deprives limited partner Mrs. Barber of all managerial authority, while on the other hand it authorizes the same Mrs. Barber to be a general partner with 'complete and exclusive' managerial authority!" 104 FCC 2d at 476 ¶ 4.

4. Finding that Mrs. Barber was primarily a limited partner, the Board treated her as a limited partner for integration purposes and refused to award integration credit for her role as a general partner. *Id.* at 476-77 ¶ 4. On August 29, 1985, LBC amended its application to reflect the transfer of parts of Mrs. Barber's limited partner interest, reducing her share to 23.33 percent and transferring a 23.33 percent limited interest to general partner Frederick Barber and another 23.34 percent limited interest to general partner Eleanor Brown.

5. LBC argues that the Board misinterpreted its partnership agreement. It asserts that the Uniform Limited Partnership Act (ULPA) and North Carolina law authorizes the dual ownership of general and limited partnership interests. Cotton does not dispute LBC's interpretation of North Carolina law, but it contends that the Commission is not obligated to follow North Carolina law. Cotton also asserts that under the partnership agreement Mrs. Barber's role as a general partner is irreconcilable with her role as a limited partner.

6. The LBC partnership agreement also states:

> This Agreement and its application shall be governed by the laws of the State of North Carolina. In the event of any conflict between any provision of this agreement and any provision of the Act, the provision of the Act [N.C. Gen. Stat. § 59-12] shall control.

Cotton Ex. 6 at 16. Section 12 of the original UPLA, section 303 of the Revised Uniform Limited Partnership Act (RULPA), and section 59-12 of the North Carolina General Statutes specifically recognize the dual ownership of general and limited partnership interests. North Carolina law provides that a person who is both a general partner and a limited partner shall have all the rights and powers, and be subject to all restrictions, of a general partner. N.C. Gen. Stat. § 59-12. However, a general partner has rights against other general partners to the extent of his limited partnership interest. *Id.* Under the terms of LBC's partnership agreement and under North

Carolina law, Mrs. Barber's limited partnership interest does not prohibit her from assuming a management position or exercising her full authority as a general partner.

7. The Commission generally has refused to consider state law when the state law is not relevant to the Commission's policies. *Signal Ministries, Inc.*, 104 FCC 2d 1481, 1494 ¶ 15 (Rev. Bd. 1982). The Commission, however, is not required to ignore state law when it is relevant to the Commission's policies -- and, indeed, to do so would be inconsistent with the principle of federalism. U.S. Const. amend. X. The Commission has relied heavily on the RULPA in developing its policies for attribution of limited partnership interests. *See Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), recon. granted in part, 58 RR 2d 604 (1985), further recon. granted in part, 1 FCC Rcd 802 (1986). For example, we have explicitly adopted the RULPA's rule that a limited partner may also be a general partner, provided that any media interest of such an owner is attributable by virtue of the general partnership interest. 58 RR 2d at 619 n.62.

8. In this proceeding, crediting Mrs. Barber's integration proposal is fully consistent with the objectives of our integration policies. Mrs. Barber will have a management position in LBC, and she always intended to be integrated as a general partner. Moreover, the Board's ruling ignores the operations and purposes of limited partnership arrangements. General partners may invest in limited partnership interests for valid economic reasons completely unrelated to the comparative process. Thus, general partners may purchase otherwise unsubscribed limited shares, or seek to increase their share of profits, without affecting the voting power of the other general partners. The refusal to recognize the integration of a general partner because he owns limited partnership interests would unduly restrict the capacity of entrepreneurs to organize and finance partnership arrangements. Such interference could raise the cost of capital for a firm seeking to enter the broadcasting industry through the comparative licensing process. *See Victory Media, Inc.*, 3 FCC Rcd 2073, 2075 ¶ 19 (1988).

9. The Board's holding is also inconsistent with our determination in *Attribution of Ownership* that ownership interests of limited partners are attributable unless there is an affirmative showing that the applicant's limited partners are fully insulated from its management. Our determination to apply the *Attribution of Ownership* insulation requirements in comparative proceedings has effectively overruled our earlier decision in *Greater Wichita Telecasting, Inc.*, 96 FCC 2d 984, 989 ¶ 9 (1984). There, we held without consideration of circumstances such as are presented in the instant case, that no weight would be given for the participation of limited partners in the management of their proposed stations.

10. Under the present circumstances, we do not believe that it was either necessary or appropriate to treat Mrs. Barber solely as a limited partner. In accordance with both limited partnership law and our holding in *Attribution of Ownership*, we conclude that the interests of a person who is both a limited and a general partner will be attributed to the applicant, because it would be impossible to provide the insulation required to demonstrate the separation of the general and limited partnership interests specified in our ownership attribution rules. We therefore reverse the Board's ruling and credit LBC for Mrs. Barber's integration proposal as a general partner.

11. This ruling, in addition to affecting diversification as a comparative factor, will increase the relative weight accorded to the person holding both general and limited partnership interests for integration purposes, by increasing the interests scrutinized in the comparative process to include attributable limited partnership interests. For example, as LBC's application was originally filed, Mrs. Barber owned a 10 percent equity interest as a general partner and a 70 percent interest as a limited partner. Combining Mrs. Barber's general and limited partnership interests would give her an 80 percent interest in the applicant and leave Mr. Barber and Mrs. Brown with only 10 percent interests, respectively. However, that calculation does not change the total attributable interests (which have always been 100 percent) for integration or diversification purposes in this case. Moreover, the change in ownership has not affected control in this case because each of LBC's principals consistently exercised equal control over the applicant.

II. INTEGRATION OF LBC'S OTHER GENERAL PARTNERS

12. When the parties exchanged exhibits detailing their integration proposals, Mrs. Barber, as LBC's sole limited partner, had authority to remove the other general partners, to amend the partnership agreement, and to dissolve the partnership. The ALJ granted an amendment by LBC after the exchange date, which redistributed the limited partnership interest equally among the three general partners and modified the powers of the limited partnership interests. The ALJ held that the amendment did not affect the comparative qualifications of the general partners, and ultimately he gave LBC credit for 100 percent integration based on the ownership interests of each of its general partners. The Review Board, having denied credit for the integration of Mrs. Barber on the grounds that she should only be considered as a limited partner, did not reach the question of the extent of the credit to be awarded for Eleanor Brown's or Frederick Barber's proposed integration. Cotton argues that on the B cutoff date, the agreement vested complete control in Mrs. Barber, and that LBC is therefore entitled to no credit for the integration of its other partners.

13. LBC is entitled to credit for the integration of its general partners if they had the legal authority and voting power to implement station policy. *Daytona Broadcasting, Inc.*, 97 FCC 2d 212, 220 ¶ 11 (Rev. Bd. 1984), aff'd on other grounds, 101 FCC 2d 1010 (1985). Thus, the present question only concerns control of the applicant and is distinct from the attribution question discussed above.

14. The record evidence indicates that LBC should be credited for the integration proposals of all of its three general partners. The record demonstrates that the partners have always acted as a three-member group and that Mrs. Barber has not exercised unilateral control over the applicant's activities. LBC's general partners have legitimate ownership interests in LBC, they retain voting control, and they will be integrated into management positions.

15. In this regard, Cotton has raised no independent question of fact concerning the good faith of LBC's limited partnership agreement. When LBC's application was filed, the Commission considered limited partnership interests to be purely passive, and therefore, as having no effect on the comparative evaluation of applicants. *See*

Greater Wichita Telecasting, 96 FCC 2d at 989 ¶ 9; *Anax Broadcasting Inc.*, 87 FCC 2d 483, 488 ¶ 15 (1981). In light of this fact, it would not be appropriate to refuse to accept an amendment that comports with the applicant's consistent intent and that was designed to conform to the Commission's evolving policy in this area.

16. Moreover, the ULPA permits limited partners to participate in certain so-called "safe harbor" activities. *See Attribution of Ownership*, 58 RR 2d at 616-17 ¶ 39. Although the powers originally accorded to the limited partner in LBC's agreement may be somewhat broader than the usual "safe harbor" provision, they are not so extraordinary as to suggest that the limited partnership agreement was a sham or that it deprived the general partners of their exclusive authority to manage and control the applicant. The authority of LBC's limited partners to amend the agreement has always been limited so that "no amendment shall change the general partners' complete and exclusive control" over the applicant. Cotton Ex. 6 at 14. In addition, the Commission will generally credit the quantitative integration of minority shareholders even though they are subject to removal by controlling interests. For example, in *Alexander S. Klein, Jr.*, 86 FCC 2d 423, 430-32 ¶¶ 18, 23 (1981), we credited the integration of a five percent shareholder who, presumably, is subject to removal by the majority shareholder. The fact that Mrs. Barber at one time could have unilaterally discharged the other general partners does not mean that they did not have managerial authority, and it is not a sufficient basis to deny credit for their integration.

17. Cotton argues that *Berryville Broadcasting Co.*, 70 FCC 2d 1 (Rev. Bd. 1978), requires a different result. We disagree. In *Berryville*, the applicant was denied integration credit for two partners who had vested complete control in a managing partner. Those partners were limited to making suggestions to the managing partner. 70 FCC 2d at 5-6 ¶ 7. Here, there was no similar abdication of authority by LBC's general partners. Eleanor Brown and Frederick Barber never gave up their authority over the management and control of their proposed station. Thus, we agree with the ALJ that LBC's August 29, 1985 amendment did not change the nature of the original partnership agreement. Consequently, there was no comparative upgrading and LBC is entitled to credit for the integration of all of its general partners ownership interests.

III. INSULATION OF LIMITED PARTNERS

18. As noted above, LBC's limited partnership interests are now held by its general partners and are fully attributable to the applicant. Thus, we would not ordinarily be concerned with LBC's compliance with the insulation requirements for non-attribution of limited partners in *Attribution of Ownership*. However, LBC's owners intend to sell their limited partnership shares to raise equity capital. Although LBC had 100 percent financing, its owners intend to convey their limited partnership interests to avoid incurring large debts (or causing LBC to incur debt) in order to construct LBC's proposed facilities. Tr. at 209-12. If LBC's owners convey those shares, it would harm the firm's comparative position unless the partnership agreement provides the insulation required for non-attribution in *Attribution of Ownership*. LBC's amendment of its partnership agreement also made clear that LBC does not intend to create additional attributable interests (that is, issue new equity).

19. We believe that we must examine LBC's partnership agreement in light of the insulation requirements specified in *Attribution of Ownership*. In *Attribution of Ownership* we determined that media interests of limited partners who are adequately insulated by the partnership agreement from "material involvement" in the management of an applicant would be exempt from the multiple ownership rules. 58 RR 2d at 619-20 ¶¶ 48-50. In *Daytona Broadcasting Co.* we held that the media interests of limited partners would not be counted for diversification purposes in comparative proceedings as long as the partnership agreement ensures the insulation required by *Attribution of Ownership*. 103 FCC 2d at 934-35 ¶ 7. We similarly believe that, where limited partners are passive investors without material involvement in the application, the interests of the limited partners should not count for integration purposes.

20. In *Attribution of Ownership*, we held that for limited partners to be relieved from attribution of ownership:

> the limited partnership agreement should specify that the exempt limited partner cannot act as an employee of the limited partnership if his or her functions . . . relate to the media enterprises of the company . . . . [A]n exempt limited partnership could not hold a management contract for the station or act as an agent for the station in procuring programming. Moreover, the partnership agreement should restrict exempt limited partners from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business . . . . In addition, the partnership agreement should either prohibit the exempt limited partner from voting on the removal of a general partner or limit this right to situations where the general partner is subject to bankruptcy proceedings . . . or is adjudicated incompetent . . . . [T]he agreement should also bar the exempt limited partner from performing any services to the limited partnership materially relating to its media activities . . . [and] from becoming actively involved in the management or operation of the media businesses or partnership.

58 RR 2d at 619-20 (footnotes omitted). We further ruled that, although limited partners may be permitted to vote on the admission of new general partners, general partners must be authorized to veto such admissions. *Id.* at 619 ¶ 49. In addition, a general partner may be removed by an exempt limited partner only on a finding by an independent party that the general partner has engaged in malfeasance, criminal conduct, or wanton or willful neglect. *Attribution of Ownership*, 1 FCC Rcd at 803 ¶ 6.

21. These restrictions provide sufficient insulation between ownership and control to justify not attributing the media interests of limited partners. *Attribution of Ownership*, 58 RR 2d at 619-20 ¶¶ 48-50. On the other hand, if an applicant in a comparative case fails to insulate ownership from control sufficiently, the media interests of its limited partners will be fully counted along with the interests of its general partners in assessing the applicant's integration proposal.

22. Although LBC has modified the original powers of its limited partner, its agreement does not appear to comply in all respects with our requirements for insulating limited partnership interests. For example, there is no provision for the use of an independent party in the removal of a general partner, as specified in *Attribution of Ownership*, 1 FCC Rcd at 803 ¶¶ 5-6. The lack of insulation is significant because of the intent of LBC's owners to raise capital by selling their limited partner interests to new limited partners.

23. The LBC partnership agreement was executed before the Commission adopted its insulation requirements. Thus, LBC was unaware of the requirements for avoiding attribution of limited partnership interests. It would be unfair to disparage LBC's proposal because it failed to comply with standards we had not yet announced. The application form (FCC Form 301) does not require the submission of limited partnership agreements. Moreover, before *Attribution of Ownership* and *Daytona* there was no reason for applicants to make an affirmative showing of the particulars of their limited partnership agreements before hearing. The Review Board has suggested that the insulation requirements should be applied prospectively -- that is, only to agreements executed after *Daytona*. *Independent Masters*, 104 FCC 2d 178, 189 n.25. However, in *Daytona* we specifically advised applicants who wish to avoid this kind of integration inquiry to follow the *Attribution of Ownership* requirements. *Daytona*, 103 FCC 2d at 935 n.6. We therefore reject the Board's prospective approach and we will apply the new insulation standards in all pending cases.

24. LBC entered into the agreement in good faith, and it timely amended its agreement to conform with earlier changes in the Commission's policies. LBC's August 29, 1985 amendment was in part a response to our *Attribution of Ownership* requirements, 58 RR 2d 604, 618-620 ¶¶ 44-50. In addition, each of LBC's general partners has a legitimate interest in the applicant, and each will be integrated into the daily management of the proposed station. Equity, therefore, requires that we permit LBC to amend its partnership agreement to comply with provisions for non-attribution specified in *Attribution of Ownership*, so that any new limited partners will be insulated from the management of the proposed station.

25. In this case, Cotton had a full opportunity to test the good faith of LBC's limited partnership agreement during the hearing phase of the proceeding. The limited partnership agreement was introduced as Cotton Exhibit 6 and LBC's principals were cross-examined on this subject. Tr. at 210-43, 328-34, 355-60. No substantial and material question of fact has been raised concerning the legitimacy of LBC's agreement. While we will authorize Cotton to comment on LBC's amendment, absent a showing of facts raising a timely and material question of fact concerning LBC's limited partnership agreement, there is no basis for further examination of that agreement.

IV. REMAINING MATTERS

A. The Amendment of LBC's Application

26. LBC filed a Petition for Leave to Amend its application to show that its General Partner, Frederick Barber is now employed as Vice President and General Manager of a television station in Indianapolis, Indiana. We will grant the Petition for Leave to Amend and we will accept LBC's amendment. LBC, however, has failed to address what effect Mr. Barber's employment will have on its integration proposal. It further appears that Mr. Barber's interest in the Indianapolis station is attributable to LBC under the diversification criterion. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 394 n.5 (1965). Accordingly, we will authorize the parties to file pleadings commenting on the effect of LBC's amendment on the comparative issue.

B. The Petitions for Leave to Supplement and to Intervene

27. In its Motion for Leave to File Supplement, LBC asks us to consider what effect recent rulings, including *Attribution of Ownership Interests*, 1 FCC Rcd 802 (1986), have on the resolution of this proceeding. *Attribution of Ownership Interests* is relevant to this proceeding and was issued after the parties filed their Applications for Review. Good cause having been shown, the supplement will be accepted.

28. Reno-Eleven is an applicant in the Reno, Nevada, comparative, television proceeding. In an Initial Decision, *Washoe Shoshone Broadcasting*, 2 FCC Rcd 5362, 5388 ¶ 248 (1987), the ALJ denied Reno Eleven's application citing the Review Board's ruling in *Cotton*. The Review Board affirmed. *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, 3945 ¶¶ 25-26 (1988). Reno-Eleven argues that in light of the ALJ's reliance on *Cotton* it is an interested party entitled to intervention under 47 C.F.R. § 1.223.

29. We will deny Reno-Eleven's petition. Reno-Eleven has not cited any Commission precedent to support its intervention request. Moreover, it failed to demonstrate that it has standing as an interested party in this proceeding or to show how its participation will assist the Commission in its resolution of the proceeding as required by 47 C.F.R. § 1.223(c). That the ALJ and the Board relied on the Board's ruling in *Cotton* does not make Reno-Eleven an interested party. To allow applicants that are adversely affected by Review Board decisions to intervene in the review of allegedly prejudicial decisions would impair the efficiency of the hearing process. Moreover, Reno-Eleven is not prejudiced by our action because it can raise its arguments when its application is considered by the Commission. Finally, its petition is grossly dilatory. The ALJ first cited *Cotton* in the *Washoe Shoshone* proceeding in the Initial Decision, which was released on August 28, 1987. Thus, Reno-Eleven was aware of the effect that this proceeding could have on its own application, but it waited almost a year before requesting intervention. It is well settled that the absence of good cause for failing to participate in a more timely manner is fatal to a dilatory request for intervention. *Simon Geller*, 91 FCC 2d 1253, 1255 ¶ 4 (1982), aff'd sub nom. *Committee for Community Access v. FCC*, 737 F.2d 74 (D.C. Cir. 1984).

V. ORDERS

30. ACCORDINGLY, IT IS ORDERED, That the Motion for Leave to File Supplement, filed February 24, 1987 by The L Broadcasting Company, IS GRANTED; and that the Supplement to Application for Review, filed February 24, 1987 by The L Broadcasting Company IS ACCEPTED.

31. IT IS FURTHER ORDERED, That the Petition for Leave to Amend filed July 22, 1988 by The L Broadcasting Company IS GRANTED, that the Amendment filed July 22, 1988 by The L Broadcasting Company IS ACCEPTED; and that the parties ARE AUTHORIZED to file comments on the amendment within fifteen (15) days from the release date of this Memorandum Opinion and Order, and to file reply comments within ten (10) days from the original filing.

32. IT IS FURTHER ORDERED, That The L Broadcasting Company MAY AMEND its partnership agreement, as specified herein, within fifteen (15) days from the release date of this Memorandum Opinion and Order, and other parties may file reply comments within ten (10) days from the original filing.

33. IT IS FURTHER ORDERED, That the Petition for Leave to Intervene filed July 26, 1988 by Reno-Eleven Telecasters IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

COAST TV	MM DOCKET NO. 84-934
	File No. BPCT-840720KG
MISSION BROADCASTING CORPORATION	MM DOCKET NO. 84-935 File No. BPCT-840723KI
SOLAR TELEVISION, INC.	MM DOCKET NO. 84-936 File No. BPCT-840723KJ

For Construction Permit
Santa Barbara, California

MEMORANDUM OPINION AND ORDER

Adopted: February 10, 1989; Released: February 23, 1989

By the Commission:

1. Before the Commission are: (1) an Application for Review filed June 19, 1987 by Coast TV; (2) Replies (Oppositions) to Coast's Application for Review filed July 6, 1987 and July 7, 1987 by Mission Broadcasting Corporation and Solar Television, Inc.; (3) an Application for Review filed June 22, 1987 by Solar; (4) Oppositions to Solar's Application for Review filed July 7, 1987 by Mission and Coast; (5) a Contingent Application for Review filed July 30, 1987 by Mission;[1] and (6) Oppositions to Mission's Contingent Application for Review filed August 14, 1987 by Coast and Solar. These pleadings relate to a decision of the Review Board that granted Mission's application to construct a new television station at Santa Barbara, California. *Coast TV*, 2 FCC Rcd 2982 (1987). To the extent indicated hereafter, we shall grant Coast's and Solar's applications for review and remand this proceeding to the Review Board for further consideration.

2. Mission and Solar also appeal an interlocutory order, *Coast TV*, 102 FCC 2d 718 (Rev. Bd. 1985), in which the Board reversed the Administrative Law Judge's dismissal of Coast's application for failure to publish notice of the designation of its application for hearing. The Board's action reinstating Coast's application is consistent with precedent and will be sustained. *See Marlin R. Karig*, 45 FCC 625 (1963).

3. Also before the Commission is a Petition for Leave to Amend filed March 8, 1988 by Mission and a Partial Opposition to Petition for Leave to Amend filed March 16, 1988 by Coast. Mission reports that, effective February 19, 1988, Floyd Little -- a voting stockholder and the proposed general manager of its station -- has "taken temporary residence" in Burbank, California, "but he is committed and obligated to return to Santa Barbara, California at such time that the construction permit is awarded to Mission Broadcasting Corporation." Coast partially opposes acceptance of Mission's amendment. Coast contends that the portion of the amendment reporting Little's commitment to return to Santa Barbara would constitute an untimely attempt to upgrade Mission's comparative showing, because Little has now abandoned his local residency for which Mission was given comparative credit. We will accept Mission's amendment. Coast does not question the legitimacy of Little's integration commitment and, based on the information before us, we have no reason to do so either. It is unrealistic for this Commission to expect the status of the principals of an applicant to remain static during often lengthy proceedings. We do not agree, as the Board has said elsewhere, that contingent integration proposals have "inherent uncertainty" that makes them "untrustworthy and uncreditable." *Houston Family Television, Ltd.*, 101 FCC 2d 661, 671 ¶ 17 (Rev. Bd. 1984). The important factor here is Little's continuing commitment to be a local resident of Santa Barbara, which is no way an upgrading of Mission's original integration proposal. *See New Continental Broadcasting Co.*, 93 FCC 2d 1275 at 1278-79 (Rev. Bd. 1983); *Henderson Broadcasting Co., Inc.*, 63 FCC 2d 119 (Rev. Bd. 1976).

I. BACKGROUND

4. Coast, Mission, and Solar are the three remaining applicants for a new UHF television station to operate on Channel 38 at Santa Barbara, California. In an initial decision, Administrative Law Judge Edward Luton granted Coast's application after finding the applicant comparatively superior based solely on its qualitative enhancement advantages. *Coast TV*, 1 FCC Rcd 34 (Admin. L.J. 1986). The initial decision was appealed to the Board. Based on quantitative integration considerations, the Board reversed the ALJ's ultimate conclusion and granted Mission's application. *Coast TV*, 2 FCC Rcd 2982 (Rev. Bd. 1987). Unlike the ALJ, who awarded all three applicants 100 percent quantitative integration credit, the Board awarded Mission at least 73.7 percent quantitative integration credit, compared to at most 30.74 percent for Coast and none for Solar. Thus, Mission became the comparative winner.

II. DISCUSSION

A. Coast TV

5. Coast is a limited partnership with three general partners, Martha Correa, Patricia E. Montemayor and Ruth J. Smith. Correa and Smith are married to individuals holding limited partnership interests in Coast. Coast executed its limited partnership agreement on June 29, 1984 and filed its application in this proceeding on July 20, 1984. Its limited partnership agreement was amended on August 5, 1985 to conform to the more stringent requirements of the reconsideration order in *Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable and Newspaper Entities (Ownership Attribution)*, 58 RR 2d 604 (1985).

6. The Board reduced Coast's quantitative integration credit from 100 percent to at most 30.74 percent (corresponding to the amended general partners' interests -- see 2 FCC Rcd at 2986 n.3) because Coast was unable to show that only the general partners -- and not any of the limited partners -- would be the active controlling managers of the proposed station. The Board was led to this

conclusion by both the inadequacy of the partnership agreement's provisions insulating Coast's limited partners from management of the applicant. *id.* at 2983 ¶ 5, and the activities of Coast's limited partners, which it said "go significantly beyond the Commission-approved domain of limited partners." *Id.* at 2985 ¶ 6. Because the Board found that the limited partnership agreement was flawed and that the limited partners were involved in managing Coast, it determined that Coast's integration credit had to be significantly reduced. In view of Mission's quantitative integration superiority, the Board further concluded that it was unnecessary to choose between awarding Coast a maximum of 30.74 percent credit or 0 percent.

7. Coast contends that the Board erroneously applied the burden of proof as between it and Mission; that is, "the Board imposed upon Coast the burden of affirmatively proving that its passive equity would truly be passive, but, with respect to Mission, it refused to impose such a burden." Application for Review at 2. Thus, Coast argues, the principle of administrative law which requires similar treatment for similarly situated applicants has not been followed here. *See Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965). Moreover, Coast believes that the Board erred in concluding that Coast failed to prove the passivity of its limited partners. Coast characterizes the activities of its limited partners as "pre-operational" and faults the Board for ignoring the fact that it amended its limited partnership agreement. On August 5, 1985, in response to the reconsideration order in *Ownership Attribution*, Coast amended its limited partnership agreement to prohibit communications between general and limited partners on matters pertaining to the day-to-day business of the partnership, to delete the right of the limited partners to vote on any matter except amendment of the limited partnership agreement (subject to veto by any general partner), and to require limited partner spouses to defer to general partner spouses on partnership matters. Finally, Coast claims that the Board's conclusion that its limited partners had undue control prior to *Ownership Attribution* was based on changes in Commission law after the fact and contrary to the provisions of the Administrative Procedure Act, 5 U.S.C. § 554(b)(3) (which require that a person be timely informed of the law asserted).

8. Normally, the Commission does not consider the interests of limited partners relevant in determining integration credit:

> The purpose of integration is to foster sensitivity to the local community and to strengthen the bond between legal responsibility and day-to-day management authority. Integration tends to accomplish these goals because those individuals who control the licensee participate in station operations on a day-to-day basis. As the limited partners are passive investors and have no authority to control the licensee, their integration or lack of integration is inconsequential.

Anax Broadcasting, Inc., 87 FCC 2d 483, 488 ¶ 15 (1981). However, sometimes an applicant may present a favorable formal structure on paper in order to gain a quantitative integration preference, but in reality that structure is not an accurate depiction of how the licensee's affairs will be managed. Thus, limited partners or non-voting stockholders, although nominally without influence over the applicant, may actually participate in or control the applicant's decision-making process. In those instances, the Commission disregards the applicant's formal ownership structure and treats the nominally passive owners (that is, non-voting stockholders or limited partners) as if they were active in the management of the applicant -- and thus relevant to the Commission's integration analysis. *See e.g., Signal Ministries, Inc.*, 104 FCC 2d 1481, 1494-97 ¶¶ 15-16 (Rev. Bd. 1986), review denied 2 FCC Rcd 1259, 1259 ¶ 2 (1987), aff'd by judgment sub nom. *Adelphi Broadcasting Corp. v. FCC*, 838 F.2d 571 (D.C. Cir. 1988); *KIST Corp.*, 102 FCC 2d 288, 292 ¶ 9 (1985), aff'd per curiam sub nom. *United American Telecasters, Inc. v. FCC*, 801 F.2d 1436 (D.C. Cir. 1986), cert. denied, 107 S. Ct. 2182 (1987); *Henderson Broadcasting Co.*, 63 FCC 2d 419, 424-26 ¶¶ 10-13 (Rev. Bd. 1977). *See also Cleveland Television Corp. v. FCC*, 732 F.2d 962, 969 (D.C. Cir. 1984). "[W]here there is a basis in the record for inferring that non-voting shareholders will exercise influence or control of an ongoing business," an applicant's integration proposal will be discredited. *Victory Media*, 3 FCC Rcd 2073, 2074 ¶ 18 (1988).

9. In the instant case, the Board found ample evidence to disregard Coast's formal ownership structure and to reduce Coast's integration credit. 2 FCC Rcd at 2983 ¶ 6. The limited partners' involvement after the limited partnership agreement was executed is clearly detailed by the Board and includes: participating in discussions concerning prosecution of Coast's application; seconding motions; completing the application; paying bills; obtaining reasonable assurance of site availability; and developing EEO plans. *Id.* These actions by the limited partners go beyond the permissible functions of limited partners and are sufficient in themselves without considering other aspects of the Board's decision to support the conclusion that the general partners would not be the *only* active, controlling owners. Furthermore, in reaching its decision, the Board did not discriminately apply the burden of proof between Coast and Mission. The record shows that Coast's limited partners were involved in Coast's operations. It was therefore incumbent upon Coast to show why it is entitled to the integration credit that it claims. *See Hispanic Owners, Inc.*, 99 FCC 2d 1180, 1191 ¶ 25 (Rev. Bd. 1985), review denied, FCC 86-316 (1986).

10. Mission's proposal presented the opposite situation. There, Coast had not presented any specific record evidence indicating that Mission's non-voting shareholders were anything but passive owners. 2 FCC Rcd at 2984 ¶ 10. Accordingly, no further showing was required because the interests of Mission's inactive owners are not relevant for the integration analysis. *Anax*, 87 FCC 2d at 488 ¶ 15.

11. We also reject Coast's argument that the Board applied subsequently developed standards and changes in Commission law. Coast executed its limited partnership agreement on June 29, 1984. Its limited partners were materially involved in its management and operation after that date. Since 1981, when the Commission decided *Anax Broadcasting*, it has been clear that the Commission would consider only "passive" limited partners to be inconsequential for purposes of integration analysis. Moreover, the "no material involvement" standard of limited partners was expressly embodied in the text of the Report and Order in *Attribution of Ownership Interests*, which we released April 30, 1984. There, we specifically stated that no limited partner relieved of attribution could be "involved in any material respect in the management or

operation of the broadcast, cable television, or newspaper entity concerned." 97 FCC 2d at 1023 ¶ 52. Because of the material involvement of Coast's limited partners summarized above, the Board properly reduced its integration credit.

B. Solar Television, Inc.

12. Solar originally filed its application on July 23, 1984 as an unincorporated association with three owners -- Eugene E. Huguez, Suzanne Manriguez, and Kenneth E. Hinton -- each owning a one-third interest. At that time, Solar stated that it intended to incorporate by the B cutoff date (September 7, 1984), but it did not. Rather, by an amendment filed February 20, 1985, Solar reported that it had become a California corporation (on February 19th), and that its three owners were equal holders of the voting stock and the corporation's sole officers and directors. 1 FCC Rcd at 40 ¶ 58.

13. As noted above, the ALJ awarded 100 percent quantitative integration credit to all three of the applicants. Solar's award was based on its proposal to integrate Huguez, Manriguez and Hinton on full-time basis into the management of the proposed station. 1 FCC Rcd at 44 ¶ 93. In reversing the ALJ, the Board reduced the quantitative integration awards given to all of the applicants, including Solar. The Board faulted Solar for not incorporating by the B cutoff date and refused to give that applicant any quantitative integration credit. In so doing, the Board stated:

> In accordance with our recent precedents which hold that an oral general partnership may not receive *any integration credit because it is too tenuous an organizational structure, Payne Communications, supra*, 1 FCC Rcd at 1056, 61 RR 2d at 1333-1334; *Pacific Television, Ltd.*, 2 FCC Rcd 1101 (Rev. Bd. 1987), we conclude that Solar shall receive *0%* integration credit. On the "B" cut-off date, Solar was an oral unincorporated association with at most an intention to incorporate -- an even vaguer and arguably more tenuous entity than an oral general partnership -- and therefore entitled to no greater ownership integration credit for its essentially informal and inchoate ownership arrangement.

2 FCC Rcd at 2985 ¶ 16 (citation omitted; emphasis in original).

14. Solar contends, among other things, that the Board's decision should be reversed and that it should have its 100 percent quantitative integration credit restored. Solar argues that the Board's reliance on *Payne Communications* and *Pacific Television* is misplaced, because the Board has confused Solar's ownership with the line of cases involving both active and passive owners. Solar states that after *Anax*, it is necessary for applicants with both active and passive owners to stabilize their ownership by a fixed deadline. Here, however, Solar is not such an applicant and the composition of Solar's ownership and integration proposal is not in question. Moreover, Solar's original three owners have remained the same throughout and their proposals to integrate have not changed. In this regard, Solar states the following:

> In its original application of July 23, 1984, sworn to by principal Kenneth E. Hinton, Solar provided statements in an exhibit (1) That the applicant had instructed counsel to arrange for its incorporation prior to the B-cutoff date; (2) That the three owners had an oral understanding that they would become stockholders, officers and directors; (3) That the three owners had an understanding that, if the application succeeded, they would devote full time to the management of the station. Again, at the B cut-off, *Amendment No. 1* stated upon oath that each principal intended to devote full time to the proposed station (a minimum of 40 hours per week).
>
> On February 20, 1985, after the cutoffs but prior to the first statement on the trial record of intentions regarding integration, Solar distributed *Amendment No. 2*, reporting that the applicant had incorporated, with interests continuing to be held equally by the three owners, now as voting stockholders. Originally, in July, 1984, incorporation was intended at the (then unpublished) B-date. But the cutoff date subsequently published was only six weeks later.

Solar Application for Review at 5.

15. The Board relied on *Payne Communications* and *Pacific Television* to support its conclusion that Solar's organizational structure was "too tenuous" to be accorded any integration credit. However, since those decisions the Commission has had the occasion to pass on this issue. In *Victory Media*, the Commission reversed the Board where it denied integration credit because certain written documentation of the applicant's incorporation had not been submitted on the B cutoff date. The Commission stated:

> To the extent that the Board relies on the lack of written documentation corroborating the specification of two classes of stock in Victory's application, it would have been useful to have these matters in writing. However, *current Commission precedent does not require written documentation of an applicant's ownership structure on the B cut - off date*. For example, we have fully credited an integration proposal even though its partnership agreement is not executed until after the time for filing amendments as a matter of right.

3 FCC Rcd at 2074 ¶ 17 (emphasis added; citations omitted.) The Commission thus acknowledged, for integration purposes, the legitimacy of a corporate applicant having an informal legal structure and lacking by-laws and other written documentation corroborating how the corporation will operate and the classes of stock issued. 3 FCC Rcd at 2074-75 ¶¶ 13-21. In so doing, the Commission pointed out that the full record must be considered in evaluating the legitimacy of the applicant, and that the informality of the applicant's legal structure and discrepancies in the corporate papers do not necessarily mean that the applicant is a sham.

16. In view of the Commission's more recent pronouncement in *Victory*, we have undertaken a review of the pertinent record evidence compiled in this case concerning Solar's organizational structure. Based on that

record evidence, we find that Solar has adequately demonstrated the legitimacy of its corporate structure for the purposes of evaluating that applicant's claimed integration proposal. Accordingly, we reverse the Board's holding to the contrary, 2 FCC Rcd at 2985 ¶ 16. Furthermore, based on our review, we find that Solar is entitled to 100 percent quantitative integration credit. Under established Commission precedent, integration credit is warranted where a specific integration proposal is set forth, the applicant adheres to it, and there is a reasonable assurance that it will be carried out. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 395 n.6 (1965); *Bradley, Hand & Triplett*, 89 FCC 2d 658, 662 ¶ 8 (Rev. Bd. 1982). Here, the record evidence demonstrates that Solar's three owners, as specified in its application, stayed the same and that their representations to be fully integrated in the management of the station remained steadfast throughout this proceeding. We have no reason to believe, based on that evidence, that Solar's three principals will not fully participate in the management of the station if Solar is given a grant.

III. ADDITIONAL MATTERS

17. Because the Board awarded Solar no integration credit, it did not consider all of the exceptions of Mission and Coast to Solar's application. *E.g.*, 2 FCC Rcd at 2985 ¶ 16. Moreover, because it felt that the issue was not decisional, the Board did not specifically rule on the extent of the quantitative integration credit due Mission. 2 FCC Rcd at 2985 ¶ 14. Nor did the Board consider the qualitative enhancement factors of the applicants' proposals. In view of our determination that Solar's 100 percent quantitative integration proposal should be fully credited, all of these matters must be considered before an affirmative public interest finding can be made with respect to the applicants in this comparative licensing proceeding.

18. In view of the foregoing, we shall remand this proceeding to the Board for its consideration of the above and any other decisionally significant matters presented by this case as a result of our determination to affirm the Board's reduction of Coast's integration credit and to award Solar 100 percent quantitative integration credit. Because the Board has already reviewed the initial decision and is familiar with the record, we believe that the public interest will be best served by proceeding in this manner.

IV. ORDERS

19. ACCORDINGLY, IT IS ORDERED, That the Petition for Leave to Amend filed March 8, 1988 by Mission Broadcasting Corporation IS GRANTED, and the amendment associated therewith IS ACCEPTED.

20. IT IS FURTHER ORDERED, That the interlocutory order of the Review Board, *Coast TV*, 102 FCC 2d 718 (Rev. Bd. 1985), IS AFFIRMED.

21. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. § 155(c)(5) and 47 C.F.R. § 1.115(g), the Application for Review filed June 19, 1987 by Coast TV and the Application for Review filed June 22, 1987 by Solar Television, Inc. ARE GRANTED to the extent reflected above and ARE DISMISSED in all other respects; and that the decision of the Review Board, 2 FCC Rcd 2982 (Rev. Bd. 1987), IS MODIFIED as reflected above.

22. IT IS FURTHER ORDERED, That this proceeding IS REMANDED to the Review Board for preparation of a supplemental decision;[2] and that the Contingent Application for Review filed July 30, 1987 by Mission Broadcasting Corporation IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Mission was granted leave to file its Application for Review until July 30, 1987 in *Coast TV*, FCC 871-074 (July 20, 1987).

[2] On November 7, 1988, Coast filed a motion to enlarge issues against Mission which alleges that Mission violated the reporting requirements of 47 C.F.R. § 1.65. On November 22, 1988, Mission filed an opposition to Coast's motion. Coast filed a reply pleading on December 1, 1988. On September 8, 1988, the Santa Barbara District Attorney filed a complaint charging a Mission principal with a felony -- solicitation of perjury. Mission had not reported this development to the Commission. Under the circumstances of this proceeding, it is appropriate for the Board to examine this matter in the first instance.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ENRON CORPORATION File No. W-2685

Request for Waiver of
Sections 90.65(b), 90.203,
90.205 and 90.250 of the
Commission's Rules to Permit
Operation of a Meteor Burst
Communications System

ORDER

Adopted: February 13, 1989; Released: February 23, 1989

By the Chief, Private Radio Bureau:

I. INTRODUCTION

1. The Private Radio Bureau has before it for consideration a request for waiver filed on May 6, 1988, by the Enron Corporation (Enron). Enron seeks permission to operate a meteor burst communications system in the continental United States on a permanent basis on the frequency 48.65 MHz using a non-type accepted transmitter generating 500 watts output power.[1] To do so, Enron seeks waivers of Sections 90.65(b), 90.203, 90.205 and 90.250 of the Commission's Rules, 47 C.F.R. §§ 90.65(b), 90.203, 90.205 and 90.250. Section 90.65(b) lists the frequencies available in the Petroleum Radio Service. Section 90.203 of the Rules provides that each transmitter utilized for operation in the private land mobile radio services must be type accepted, and Section 90.205 of the Rules provides that such operation in the 25 to 100 MHz frequency range is limited to 300 watts output power. Section 90.250 of the Rules provides that meteor burst communications systems can be routinely authorized only in the state of Alaska and only on the frequencies 44.20, 45.90, 42.40 and 44.10 MHz. Enron therefore seeks waiver of these rules in order to operate its meteor burst system outside the state of Alaska.

II. BACKGROUND

2. The Enron Corporation is engaged in the interstate transportation of natural gas by pipeline. The pipeline network is approximately 37,000 miles long and travels through twenty-one states and the Gulf of Mexico. Northern Natural Gas Company, a division of Enron, was granted developmental authority to operate a meteor burst communications system in 1984. The authorization was renewed in 1985, 1986 and 1987. This system has operated during this time without causing harmful interference to traditional two-way radio systems.

3. During these four years of developmental operation it operated on frequency 48.68 MHz, a frequency shared by both the Petroleum and Forest Products Radio Services. During that time Enron studied the interference potential of the meteor burst technology. It concluded that meteor burst communications have no impact on traditional forms of communication or television reception. In four years of operation, no reports of harmful interference were received. Enron now seeks a waiver for an indefinite period to continue its operations.

III. WAIVER REQUEST

4. In support of its request, Enron states that it seeks to use meteor burst communications to monitor its pipeline in remote areas of the country, where solar powered meteor burst transmitters have proven to provide a dependable information gathering tool. It states that the pipeline travels through areas where wireline circuits are not available and traditional types of radio telemetry equipment will not provide dependable communication. Enron indicates that its remote transmitters are located in isolated areas far away from the bulk of two-way radio users and television receivers. The remote transmitters broadcast a 200 millisecond data burst every 15 minutes which is acknowledged by the central station in Mynard, Nebraska. The minimal air time greatly limits any potential for harmful interference.

5. Despite test results which indicated that the possibility of harmful interference resulting from Enron's activity would be extremely small, the Forest Products Radio Service frequency coordinator expressed concern over possible interference from widespread use of the requested meteor burst system and recommended that the system be operated between two regularly assignable land mobile frequencies, both of which are shared by the Forest Products and Petroleum Radio Services. Enron has therefore requested the permanent use of frequency 48.65 MHz. Use of this frequency would eliminate the possibility of any co-channel interference and, because of the operating parameters of the system, should virtually eliminate the possibility of any adjacent channel interference.

6. Enron states that it has invested in excess of300,000 in the development of its meteor burst radio system. It is satisfied that it can operate without causing harmful interference. It realizes that the present Rules would not permit permanent licensing of the system but is reluctant to invest additional capital without a more permanent authorization from the Commission. Enron cites the similar waiver recently granted to Transtrack, Inc. to permit the licensing of another meteor burst radio system.[2]

IV. DISCUSSION

7. Meteor burst communications systems were initially authorized in the state of Alaska only, in July, 1983, as the result of a rule making.[3] In recent years, however, a number of such systems have been authorized nationwide.[4] Most recently, the Commission has authorized Transtrack, Inc. to operate a base/mobile meteor burst radio system nationwide. Transtrack proposed to operate a meteor burst communications system to determine and report the position of vehicles and to transmit limited two-way data communications between mobile units and dispatchers on a nationwide basis. It sought a waiver of various sections of the Commission's Rules that pertain to the technical standards and frequency assignments for automatic vehicle monitoring and meteor burst systems. Based on an analysis of the potential for interference

presented by its proposal, the Commission granted Transtrack a permanent waiver to operate its system on a secondary, non-interference basis.

8. Enron has operated its system for four years without causing harmful interference. The system uses minimal air time and is therefore extremely spectrum efficient. We agree that a more permanent type of operating authority is justified. The meteor burst technology proposed appears ideal for its application. The system provides dependable communications in remote areas, while operation in the remote areas greatly reduces the potential for harmful interference. Additionally, it has requested the use of an offset frequency which will result in more spectrum efficiency and even less potential for interference.

DECISION

9. Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, the Commission may waive any provision of its Rules if good cause is shown and if grant of the waiver does not undermine the policies set forth by the Rule. *See WAIT v. FCC*, 418 F.2d 1153 (D.C.Cir. 1969) and *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983). We believe good cause has been shown, and therefore grant Enron a waiver of Sections 90.250, 90.65(b), 90.203 and 90.205 of the Rules for an indefinite term. This action is consistent with the waiver granted to Transtrack, Inc., cited above, and is in the public interest. Enron's operation will be on a secondary non-interference basis to licensees operating traditional two-way radio systems, and to television reception, and to any other authorized radio service. Failure to correct such interference may result in cancellation of this waiver without right of hearing.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTES

[1] Meteor burst communications utilizes the phenomenon of enhanced radio propagation by reflecting radio frequency (RF) energy (usually in the low VHF range) from a transmitting source off ionized trails of billions of tiny meteors as they enter the earth's atmosphere at altitudes of approximately 100 miles. The height of these meteor trails permits the transmissions to be used for reflected over-the-horizon communications at distances of up to 1,200 miles. Enron believes that the rate of dispersion of the reflective ions in the meteor trail, and the time required for practical burst techniques, make the 40 to 50 MHz spectrum the most effective for meteor burst communications.

[2] Transtrack, Inc., File No. 75-319, released November 28, 1988, 3 FCC Rcd. 6833.

[3] Report and Order in Gen. Docket No. 82-694, 48 Fed. Reg. 34,039 (July 17, 1983). The frequencies 44.20 and 45.90 MHz were allocated for use by Private Land Mobile Radio Stations, and the frequencies 42.40 and 44.10 MHz were assigned to common carrier stations in the Rural Radio Service. The Report and Order specifically limited the allocation to the geographic area of Alaska, but was silent regarding future use of those frequencies, or of meteor burst communications generally elsewhere.

[4] In addition to Transtrack and Enron systems now operating, the Department of Agriculture operates the SNOWTEL meteor burst data acquisition system on 40.53 and 41.53 MHz with remote units in eleven western states to monitor water management resources. Media Data, Inc. (MDI) operates a central office base station transmitting 2000 watts output power and remote units responding with 500 watt transmissions on 42.40 and 44.10 MHz. These systems have been operating for several years, and, significantly, the Commission has not received any reports of interference from their operations.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 23, 1989

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for responding to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. Typically, these responses to individuals are not released to the public or published in the FCC Record (*See* 0.445(a) of the rules).

However, in order to provide the public with a clearer understanding of this new process, these decisions will be made available to the public. Periodically, the Managing Director will release a Public Notice listing the decisions he has made on these matters. The decisions will then be placed in General Docket 86-285. A copy of the decision will also be placed in the appropriate docket, if one exists. In the future, it may be decided to publish only those decisions that establish new precedents or may be of wide interest. All decisions will continue to be placed in the appropriate docket.

The following Managing Director decisions are released for information:

C. R. Crisler - Determination That Procedural Rights Were Not Denied - Channel 238A at Lafayette, LA (MMB Docket 87-449) (May 17, 1988)

The Voice of International Christian Evangelism, Inc. - Request for Filing Fee Refund Denied - Station KGBA at Holtville, CA (June 1, 1988)

Dr. Delbert Van Voorhis - Request for Partial Waiver of Filing Fee Denied - Station KHPY at Yucaipa, CA (June 1, 1988)

Atwater Broadcasting Company - Request for Fee Refund of Filing Fee Denied - New FM Station at Atwater, CA (June 1, 1988)

Radio Greenwood, Inc. - Petition for Reconsideration Denied - Station WGSW at Greenwood, SC (June 2, 1988)

Richard H. Riggs/Charles H. Hutchinson - Request for Reinstatement Granted - New FM Station at Marysville, OH (June 10, 1988)

Alascom, Inc. - Request for Waiver of Filing Fee Granted - Satellite Communications between Providenyia, Magadon, U.S.S.R. and Anchorage, Alaska (July 28, 1988)

Oasis Radio, Inc. - Request for Filing Fee Refund Granted - Station KAVC at Richmond, CA (July 28, 1988)

Dr. Herbert Gray - Request for Reconsideration Denied - New FM Station at Meridianville, AL (July 28, 1988)

Bear City Broadcasting - Request for Reconsideration Denied - New FM Station at Big Bear City, CA (July 28, 1988)

Matanuska Telephone Association, Inc. - Request for Refund of Filing Fees Granted - Public Mobile Service Applications (September 29, 1988)

Southwest Ohio Broadcast Service General Partnership - Request for Refund of Filing Fee Granted - Station WSWO-FM at Wilmington, OH (September 29,1988)

Pierce Sales - Request for Waiver of Filing Fee Denied - Equipment Authorization (September 30, 1988)

RITRON, Inc. - Request for Refund of Filing Fees Denied (October 14, 1988)

Ruben Velasquez - Request for Reconsideration Granted - New FM Station at Midland, TX (October 20, 1988)

G&D Communications - Request for Refund of Hearing Fee Granted - New TV Station at Paris, TX (October 25, 1988)

Association for Higher Education of North Texas - Request for Exemption from Filing Fees Granted - Instructional Fixed Television Service (October 25, 1988)

Mehl D. Tafoya - Request for Refund of Hearing Fee Granted - New FM Station at Bloomfield, NM (MM Docket 87-340) (October 31, 1988)

Gemini Communications Corp. - Petition for Reinstatement Granted - Bank Error (October 31, 1988)

TVX of Raleigh-Durham, Inc. - Request for Declaratory Ruling Granted - Significant Viewership (November 2, 1988)

Bilmar Communications, Inc. - Request for Refund of Filing Fee Denied - Station KEZL at Fowler, CA (November 2, 1988)

Emerald Coast Broadcasting - Request for Refund of Hearing Fee Granted - New TV Station at Destin, FL (November 2, 1988)

Williamsport Television Association - Request for Refund of Hearing Fee Denied - New TV Station at Williamsport, PA (November 2, 1988)

William E. Northfield - Petition for Reinstatement Granted - Bank Error (November 2, 1988)

Bennet Kessler - Petition for Reinstatement Granted - Bank Error (November 2, 1988)

Wind River Communications, Inc. - Request for Waiver of Fee Denied - FM Translator K221DD at Lander, WY (November 2, 1988)

Huntington Broadcasting Company - Request for Refund of Hearing Fee Granted - New FM Station at Huntington, TX (MM Docket 88-208)(November 4, 1988)

United Cellular Enterprises - Request for Reinstatement Partially Granted - Bank Error (November 4, 1988)

William Carlton Link - Request for Declaratory Ruling Granted - New FM Station at Lawrenceville, VA (November 4, 1988)

Astroline Communications Limited Partnership - Request for Refund of Filing Fee Granted - WHCT-TV at Hartford, CN (November 8, 1988)

Charles D. Jones - Request for Reconsideration Rendered Moot - Bank Error (November 9, 1988)

Shekinah Shamea Enterprises - Request for Reinstatement Denied - Bank Error in re New FM Station at Pensacola, FL (September 12, 1988)

Harron Communications Corporation - Request for Refund of Filing Fee Granted - WGBS (November 23, 1988)

JWB Cable Company - Request for Refund of Filing Fee Granted - KSTU (November 23, 1988)

TeleCable Corporation - Request for Refund of Filing Fee Granted - WXIN (November 23, 1988)

Channel, Inc. - Request for Refund of Filing Fees Granted - Channel 19 (November 23, 1988)

Broward Cablevision - Request for Refund of Filing Fee Granted - WFLX (November 23, 1988)

Mountain Cable Company - Request for Refund of Filing Fees Granted - Earth Station Licenses (November 23, 1988)

Skycom, Inc. - Request for Refund of Hearing Fee Denied - New TV Station at Fond du Lac, WI (November 21, 1988)

Niagara Frontier Broadcasting Partnership - Request for Refund of Filing Fee Granted - WNYB-TV at Buffalo, NY (November 29, 1988)

Lynchburg-Roanoke Television Partners Limited Partnership - Request for Refund of Filing Fee Granted - WJPR-TV at Lynchburg, VA (November 29, 1988)

Family Broadcasting Company, Inc. - Request for Refund of Hearing Fee Denied - New TV Station at Fort Scott, KS (December 1, 1988)

B & F Broadcasting, Inc. - Request for Refund of Hearing Fee Denied - New FM Station at Clinton, MO (December 1, 1988)

Northland Cable Properties Seven Limited Partnership - Request for Refund of Filing Fee Granted - Station KTXH-TV at Houston, TX (December 1, 1988)

Ralph D. Albertazzie - Request for Refund of Hearing Fee Granted - New TV Station at Martinsburg, WV (December 7, 1988)

Malrite of Florida, Inc. - Request for Refund of Filing Fees Granted - Significant Viewership (December 7, 1988)

Linden Radio Joint Venture - Request for Refund of Hearing Fee Granted - New FM Station at Linden, AL (December 12, 1988)

William L. Zawila - Request for Refund of Hearing Fee Denied - New AM Station at Templeton, CA (MM Docket 88-92) (December 12, 1988)

William H. Burckhalter & Cynthia B. Merrithew - Request for Refund of Hearing Fee Denied - New FM Station at Jacksonville, SC (December 12, 1988)

Joseph H. Harpole, Sr. - Request for Reinstatement Denied - Payment Error (December 12, 1988)

Robert D. Zellmer - Protest of Fee Assessment Denied - Class IV AM Station (December 12, 1988)

PSA, Inc. - Request for Refund of Hearing Fee Denied - New TV Station at Charleston, WV (December 12, 1988)

WFNR, Inc. - Request for Reinstatement Granted - Bank Error in re New Am Station at Blacksburg, VA (December 12, 1988)

Gary and Virginia Infante Brill - Request for Refund of Hearing Fee Denied (MM Docket 88-92) (December 12, 1988)

Rock of Panama City, Inc. - Request for Refund of Filing Fee Denied - New TV Station, Channel 62, at Panama City, FL (December 14, 1988)

Sunshine Broadcasting Co. - Request for Refund of Filing Fee Granted - New FM Station at Socastee, SC (December 15, 1988)

W & R Enterprises, Inc. - Request for Refund of Filing Fee Granted - New FM Station (December 15, 1988)

Sudduth Media Company - Request for Refund of Hearing Fee Denied - New FM Station at Paris, TX (MM Docket 87-145)(December 15, 1988)

Gary Van Veghten - Request for Refund of Hearing Fee Granted - New FM Station at Little Falls, NY (December 16, 1988)

Centennial Broadcasting Corporation - Request for Refund of Filing Fee Granted - Significant Viewership re KDVR-TV at Denver, CO (December 28, 1988)

Tele-Communications, Inc. - Request for Refund of Filing Fees Granted - Assignment of Station Licenses (December 28, 1988)

For further information, contact Thomas M. Holleran at (202) 632-5316.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-37

In the Matter of

Amendment of Section 73.202(b), RM-6590
Table of Allotments,
FM Broadcast Stations.
(Two Harbors, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 2, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Twin Ports Broadcasting, Inc. (petitioner) requesting the substitution of FM Channel 282C2 for 282A at Two Harbors, Minnesota. Petitioner also requests the modification of its construction permit (BPH880406MC) for Channel 282A, to specify Channel 282C2.

2. Petitioner requests that the Commission proceed with its request on an expedited basis since Channel 282C2 will be the first local transmission service for the community. Petitioner is the permittee of an unbuilt FM broadcast station to serve Two Harbors on Channel 282A.

3. We believe petitioner's proposal warrants consideration. Channel 282C2 can be allotted to Two Harbors, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules at petitioner's specified site.[1] Since Two Harbors is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government is required for this allotment. We shall also propose to modify the construction permit of Twin Port Broadcasting, Inc. to specify operation on Channel 282C2 in accordance with Section 1.420(g) of the Commission's Rules.

4. In order to provide a wide coverage area station for the Two Harbors, Minnesota area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Two Harbors, Minnesota	282A	282C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Bodorff
Fisher, Wayland, Cooper
& Leader
1255 - 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(Counsel for the petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 282C2 are 46-59-51 and 91-50-13.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-38

In the Matter of

Amendment of Section 73.202(b), RM-6517
Table of Allotments,
FM Broadcast Stations.
(Flint, Harbor Beach and
Sebewaing, Michigan)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: January 30, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Reams Broadcasting, Inc. (petitioner), licensee of Station WWCK-FM, Flint, Michigan, seeking the substitution of Channel 288B1 for Channel 288A at Flint. Petitioner also requests the modification of its license for Station WWCK-FM to specify operation on Channel 288B1 in lieu of Channel 288A.

2. Channel 288B1 can be allotted to Flint, Michigan, at the petitioner's specified coordinates, in compliance with the Commission's minimum distance separation requirements.[1] The allotment at Flint will require substitutions at Harbor Beach and Sebewaing, Michigan. A staff engineering study reveals that Channel 279C2 can be substituted for Channel 289C2, Station WFMM, Harbor Beach, Michigan, at the site specified by the permittee for Station WFMM.[2] DCS Radio is the holder of the construction permit for Channel 289C2 at Harbor Beach (BPH870225IB). To accommodate the channel change at Harbor Beach, it is necessary to substitute Channel 267A for Channel 280A at Sebewaing, Michigan. Channel 267A can be allotted to Sebewaing at the site specified by the permittee for Channel 280A at that community.[3] Family Stations, Inc. is the holder of the construction permit for Channel 280A, Station WWMI, Sebewaing (BMPED8710081ID). Since Flint, Harbor Beach and Sebewaing, Michigan, are all within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government is required. A review of petitioner's proposal shows that the allotment at Flint would be short spaced by approximately 39.1 kilometers to Channel 288A, Charham, Ontario, Canada, and the proposed allotment at Harbor Beach would be 10.2 kilometers short spaced to Channel 280A, Sarina, Ontario, Canada. We shall request concurrence from the Canadian government for the allotment of Channel 288B1 at Flint and Channel 279C2 at Harbor Beach as specially negotiated short spaced allotments. We shall propose these substitutions since all of the interference would fall over Lake Huron and the U.S.-Canadian Working Agreement specifically classifies interference occurring over the Great Lakes as non-objectionable. We shall also propose to modify the license of Station WWCK-FM, Channel 288A, to specify operation on Channel 288B1 in accordance with Section 1.420(g) of the Commission's Rules.

3. An Order to Show Cause will be issued to DCS Radio, permittee of Station WFMM, Channel 289C2, Harbor Beach, Michigan, and to Family Stations, Inc., permittee of Station WWMI, Channel 280A, Sebewaing, Michigan, in order to provide an opportunity to state any objections they may have with the proposal. Whenever an existing licensee or permittee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of the new allotment to make a commitment that it will reimburse the affected station for the costs incurred in changing frequencies. Petitioner stated that it will reimburse both DCS Radio Associates, Ltd. and Family Stations, Inc. for the reasonable and foreseeable expenses incurred in modifying their respective facilities in accordance with this proposal.

4. In view of the fact that the proposed allotment could provide Flint with a wide coverage area service, we propose to amend the FM Table of Alloments, Section 73.202(b) of the Commission's Rules, for the communities listed below:

	Channel No.	
City	Present	Proposed
Flint, Michigan	224A, 236B1, 288A, 300B	224A, 236B1, 288B1, 300B
Harbor Beach, Michigan	289C2	279C2
Sebewaing, Michigan	280A	267A

5. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, DCS Radio, the permittee of Station WFMM, Harbor Beach, Michigan, SHALL SHOW CAUSE why its permit should not be modified to specify operation on Channel 279C2 in lieu of Channel 289C2.

6. Pursuant to Section 1.87 of the Commission's Rules, DCS Radio, may, not later than **April 17, 1989,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on DCS Radio to furnish additional information. If DCS Radio, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, DCS Radio will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Family Stations, Inc., the permittee of Station WWMI, Sebewaing, Michigan, SHALL SHOW CAUSE why its permit should not be modified to specify operation on Channel 267A in lieu of Channel 280A.

8. Pursuant to Section 1.87 of the Commission's Rules, Family Stations, Inc. may, not later than **April 17, 1989,** file a written statement showing with particularity why its permit should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Family Stations, Inc. to furnish additional information. If Family Station, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Family Stations, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

DCS Radio Associates, Ltd.
6250 South Cedar, #12B001
Lansing, Michigan 11101

Family Stations, Inc.
3108 Fulton Avenue
Sacramento, California 95821

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Marnie K. Sarver
Donald M. Itzkoff
Pierson, Ball & Dowd
1200 18th Street, N.W.
Suite 1000
Washington, D.C. 20036
(Counsel for Reams Broadcasting, Inc.)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 288B1 are 43-01-18 and 83-41-00.

[2] The coordinates for Channel 279C2 are 43-59-06 and 82-58-25.

[3] The coordinates for Channel 267A are 43-48-01 and 83-23-38.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-472

In the Matter of

Amendment of Section 73.202(b),	RM-6395
Table of Allotments,	
FM Broadcast Stations.	
(Ackerman and Cleveland,	
Mississippi)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 2, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 5818 (1988), proposing the substitution of FM Channel 300C for Channel 300C1 at Ackerman, Mississippi. The *Notice* was issued in response to a petition filed jointly by French Camp Radio, Inc. (French Camp) and Carol B. Ingram (Ingram). French Camp also requested modification of its license for Station WFCA to specify operation on the higher class channel. French Camp and Ingram filed joint comments. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 300C for Channel 300C1 at Ackerman, Mississippi, as it would provide expanded coverage to the surrounding area. The substitution can be made in compliance with the minimum distance separation requirements at WFCA's current site.[1] As indicated in the *Notice*, to accommodate the channel substitution at Ackerman, it is necessary to substitute Channel 295A for 299A at Cleveland, Mississippi. Channel 299A was allotted to Cleveland in MM Docket 84-231 and made available for application in Window No. 51 (opened January 19, 1988 and closed March 1, 1988). Carol B. Ingram is the applicant for Channel 299A at Cleveland (880301NM) and filed jointly with French Camp Radio, Inc. agreeing to the substitution of channels. The substitution of channels at Cleveland can be accomplished in compliance with the minimum distance separation requirements with a site restriction 3.1 kilometers (1.9 miles) northwest of the community.[2] It should be noted that Carol B. Ingram has agreed to the substitution of channels and the site restriction. French Camp has indicated a willingness to reimburse the applicant for Channel 299A at Cleveland for all reasonable costs involved in changing frequencies. Therefore, we shall substitute FM Channel 295A for Channel 299A at Cleveland, Mississippi, and in accordance with Commission policy, retain the applicant's filing protection for Channel 299A when she amends to specify Channel 295A, since the class of channels are equivalent. *See, Philipsburg, Kansas*, 48 FR 10844 (1983).

3. We have authorized a modification of French Camp's license for Station WFCA, Ackerman, Mississippi, to specify operation on Channel 300C in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Ackerman, Mississippi	300C
Cleveland, Mississippi	224A, 280A, 295A

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WFCA, Ackerman, Mississippi, IS MODIFIED to specify operation on Channel 300C, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The coordinates for Channel 300C at Ackerman are 33-25-25 and 89-24-13.

[2] The coordinates for Channel 295A at Cleveland are 33-46-04 and 90-44-37.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-39

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Alexandria, Minnesota) — RM-6611

NOTICE OF PROPOSED RULE MAKING

Adopted: February 2, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Paradis Broadcasting of Alexandria, Inc. (petitioner) requesting the substitution of FM Channel 222C2 for Channel 224A at Alexandria, Minnesota. Petitioner also requests modification of its license for Station KXRA-FM, Channel 224A, to specify Channel 222C2. Petitioner stated its intention to construct the necessary facilities for operation on Channel 222C2.

2. We believe petitioner's proposal warrants consideration. Channel 222C2 can be allotted to Alexandria, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site, 21.7 kilometers (13.5 miles) west of the community.[1] We shall also propose to modify the license of Station KXRA-FM, Channel 224A, to specify operation on Channel 222C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. In order to provide a second wide coverage area station for the Alexandria, Minnesota area, the Commission PROPOSES TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Alexandria, Minnesota	224A, 257A, 264C	222C2, 257A, 264C

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Frank R. Jazzo
Fletcher, Heald & Hildreth
1225 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(Counsel for the petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 222C2 at Alexandria are 45-54-00 and 95-39-00. Although these coordinates are short spaced to Station KDDR-FM, Channel 222C2, Oakes, North Dakota and to a pending rule making (RM-6545) to substitute Channel 221C1 at Oakes, Michael C. Steele, licensee of Station KDDR-FM, has amended his pending petition for rule making to request the substitution of Channel 223C1 rather than 222C1. As a result of this amendment both the KDDR-FM and KXRA-FM upgrade requests can be proposed without conflicts.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-40

In the Matter of

Amendment of Section 73.202(b), RM-6571
Table of Allotments,
FM Broadcast Stations.
(Vinton, Iowa)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 30, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Harold A. Jahnke (petitioner) requesting the allotment of Channel 296A to Vinton, Iowa, as the community's first local FM service. Petitioner states that he will apply for the channel, if allotted. Channel 296A can be allotted to Vinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) south to avoid a short-spacing to Station KROC-FM, Channel 295C, Rochester, Minnesota.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 296A to Vinton, Iowa, as the community's first local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Vinton, Iowa	–	296A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Harold A. Jahnke
421 Central Avenue East
Hampton, Iowa 50441
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 42-04-42 and West Longitude 92-01-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-41

In the Matter of

Amendment of Section 73.202(b), RM-6550
Table of Allotments,
FM Broadcast Stations.
(Oskaloosa and Perry, Iowa)

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: January 30, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Jomast Corporation (petitioner), requesting the substitution of Channel 285C2 for Channel 285A at Oskaloosa, Iowa, and the modification of its license for Station KOSK(FM) to operate on the higher powered channel. In order to allot Channel 285C2 to Oskaloosa in compliance with the Commission's minimum distance separation requirements, petitioner also requests the substitution of Channel 287A for Channel 285A at Perry, Iowa, and the modification of Perry Broadcasting Company's license for Station KDLS to specify the alternate channel.

2. Petitioner states that the modification of its license to specify Channel 285C2 would provide Oskaloosa and its county, Mahaska, with its first local wide-coverage area FM service. In accordance with Commission policy, petitioner states that it will reimburse the licensee of Station KDLS for the expenses it may incur in changing its channel of operation to Channel 287A.

3. Channel 285C2 can be allotted to Oskaloosa and Channel 287A can be allotted to Perry in compliance with the Commission's minimum distance separation requirements and the channels may be used at the present transmitter sites of Stations KOSK(FM) and KDLS, respectively.[1] As requested, we shall also propose to modify petitioner's license for Station KOSK(FM) to specify operation on Channel 285C2. In accordance with Section 1.420(g) of the Commission's Rules, petitioner's license may be modified without giving consideration to competing expressions of interest in use of the channel at Oskaloosa or requiring the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties. The license of Station KDLS may also be modified without considering competing expressions of interest since the channels are equivalent.

4. We believe the public interest would be served by proposing the substitution of channels discussed above since it could enable Station KOSK(FM) to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Oskaloosa, Iowa	285A	285C2
Perry, Iowa	285A	287A

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Perry Broadcasting Company, licensee of Station KDLS, Perry, Iowa, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 287A as proposed herein instead of the present Channel 285A.

6. Pursuant to Section 1.87 of the Commission's Rules, Perry Broadcasting Company may, not later than **April 17, 1989,** file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Perry Broadcating Company to furnish additional information. If Perry Broadcasting Company raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date refered to above, Perry Broadcasting Company will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the licensee of Station KDLS, as follows: Perry Broadcasting Company, P.O. Box 548, Perry, Iowa 50220.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gregg P. Skall, Esq.
Baker & Hostetler
1050 Connecticut Avenue, N.W., Suite 1100
Washington, D.C. 20036
(Counsel to petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See, Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 285C2 at Oskaloosa are North Latitude 41-19-15 and West Longitude 92-38-44. The coordinates for Channel 287A at Perry are North Latitude 41-49-58 and West Longitude 94-02-15.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-188

In the Matter of

Amendment of Section 73.202(b), RM-6287
Table of Allotments,
FM Broadcast Stations.
(Lawton, Oklahoma)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 30, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Broadco of Texas, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 2559 (1988), proposing the substitution of Channel 258C2 for Channel 237A at Lawton, Oklahoma, and the modification of its license for Station KMGZ to specify operation on the higher powered channel. The petitioner filed comments reiterating its intention to apply for Channel 258C2, if allotted. Mark Norman (Norman) also filed comments. The petitioner and Cameron University (Cameron), permittee of noncommercial educational Station KCCU, Channel 207C2, Lawton, Oklahoma, filed reply comments.

2. Both Norman and Cameron support the allotment of Channel 258C2 to Lawton and its use by Station KMGZ, but request that Channel 237A not be deleted. Both parties state their intention to apply for the Class A channel, and Cameron also requests that the channel be reserved for noncommercial educational use.[1] It states that, as a result of TV Channel 6 considerations, use of Channel 237A would permit a greater signal than that achievable with Channel 207C2. In support, it cites *West Lafayette, Indiana*, 3 FCC Rcd 3625 (1988). Cameron does not specify how a lower class channel would permit a "greater" signal.

3. Petitioner, in anticipation of Cameron's reply comments, supports the reservation of Channel 237A for noncommercial educational use. However, it believes that the retention of the channel, in the context of this rule making proceeding, would not comply with the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. Section 553(b), (c). It points out that the *Notice* proposed the deletion of Channel 237A, thus providing notice to interested parties that the channel would be available for allotment to other communities as a new allotment or adjacent or co-channel upgrade. It believes that Norman's proposal to retain Channel 237A at Lawton does not constitute adequate notice permitting the Commission to take an action opposite to the one proposed in the *Notice of Proposed Rule Making*. In support, it cites *National Black Media Coalition v. F. C. C.*, 791 F.2d 1016, 1022, 1023 (2nd Cir. 1986) (*NBMC*).

4. Based on the record before us, we believe the public interest would be served by allotting Channel 258C2 to Lawton, Oklahoma, since it could permit expanded service by Station KMGZ. As proposed, we shall also modify petitioner's license to specify operation on the higher powered channel since no other party expressed an interest in its use. *See* Section 1.420 of the Commission's Rules. Channel 258C2 can be allotted to Lawton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) east to avoid a short-spacing to Station KBOG, Channel 257A, Cordell, Oklahoma.[2]

5. We also find that the public interest would be served by retaining Channel 237A at Lawton. We disagree with petitioner that its retention is contrary to the notice and comment provisions of the Administrative Procedure Act (APA). While the *Notice* proposed the substitution of Channel 258C2 for Channel 237A and the modification of petitioner's license accordingly, it did not in any way indicate that the retention of Channel 237A at Lawton was an option specifically foreclosed from consideration in this proceeding, nor did it propose a rule change substantively inconsistent with the retention of Channel 237A at Lawton. To the contrary, the *Notice* stated that the proposal represented a non-adjacent channel upgrade, and went on to state that in accordance with Section 1.420 of the Commission's Rules, Channnel 237A might not be deleted from Lawton if a competing expression of interest in use of the Class C2 channel were expressed. Therefore, parties were on notice that one possible outcome of the proceeding was retention of Channel 237A at Lawton, and any parties wishing to express their interest in use of Channel 237 at another community were fairly apprised that they could do so in this proceeding.[3] However, no such comments were received. *NBMC* is inapposite. In that case, the Commission indicated its intention, in a Notice of Proposed Rule Making, to extend the applicability of a rule to a different class of cases, but ultimately decided not simply to retain its present rules without extending them to a new class of cases, but to delete the existing rule altogether. An analogous action in this proceeding would be a rule change both refusing to allot Channel 258C2 to Lawton and deleting Channel 237A without replacement. Finally, we find that the public interest would not be served by requiring Cameron and Norman to express their interest in Channel 237A in a new rule making proceeding. The public interest requires prompt initiation of new service, a goal which can best be achieved by the retention of Channel 237A at Lawton. Channel 237A can remain allotted to Lawton in compliance with the Commission's minimum distance separation requirements without a site restriction.[4]

6. We will not, however, reserve the channel for noncommercial educational use. Commercial channels are generally not reserved for noncommercial educational use unless channels within the reserved band are precluded by either the presence of Canadian or Mexican allotments or VHF television Channel 6 stations. Here, Cameron wishes to use Channel 237A because it reduces unspecified signal limitations present on Channel 207C2, for which it has a construction permit. Therefore, while Cameron may believe that it is more advantageous to operate on Channel 237A, it has not met the required burden of demonstrating that use of all noncommercial educational channels are precluded from use by the pres-

ence of TV Channel 6. It may, of course, file an application seeking to operate a noncommercial educational station on Channel 237A.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 10, 1989,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Lawton, Oklahoma	232A, 237A, 251C1, 258C2, 268C1, 297C2

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Broadco of Texas, Inc. for Station KMGZ, Lawton, Oklahoma, IS MODIFIED to specify operation on Channel 258C2, in lieu of Channel 237A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

9. The filing window for applications for Channel 237A at Lawton, Oklahoma, will open on **April 11, 1989,** and close on **May 11, 1989.**

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Cameron states that "to the extent that" Norman's comments were filed on behalf of Cameron, they are subsumed within Cameron's representation that it will seek Channel 237A for use by the University as a noncommercial facility. However, Norman does not state that its comments are on behalf of any party other than himself. Therefore, his comments will be considered as a separate statement of intent to apply for Channel 237A.

[2] The coordinates for this allotment are North Latitude 33-34-43 and West Longitude 98-16-25.

[3] Although the *Notice* did not discuss the possibility that an expression of interest in Channel 237A at Lawton, as opposed to Channel 258C2, might lead to retention of the Class A channel at Lawton, the APA does not require that every possible outcome of a rule making proceeding be enumerated in the Notice, instead requiring only a description of the subjects and issues involved. The *Notice* in this proceeding apprised the public that the subject concerned FM frequency allotments to Lawton, Oklahoma, and that among the issues presented was whether Channel 237A should be retained or deleted at Lawton.

[4] The coordinates for Channel 237A at Lawton are North Latitude 34-36-42 and West Longitude 98-24-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-33

In the Matter of

Amendment of Section 73.202(b),	RM-6156
Table of Allotments,	RM-6428
FM Broadcast Stations.	
(Austin, Yoakum and Hallettsville, Texas)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 30, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Clear Channel Communications, Inc. (petitioner), the Commission considers herein the *Notice of Proposed Rule Making*, 3 FCC Rcd 650 (1988), proposing to substitute Channel 272C2 for Channel 272A at Austin, Texas, and to modify the license of Station KPEZ(FM) to specify operation on the higher class co-channel. In order to accomplish the substitution at Austin, the *Notice* also proposed the substitution of Channel 223A for Channel 272A at Yoakum, Texas and the modification of the license of Station KYOC(FM) accordingly. Petitioner submitted supporting comments reaffirming its intention to upgrade Station KPEZ(FM) and attached thereto a letter from Coastal Broadcasting, Inc. (CBI), licensee of Station KYOC(FM), expressing its continued support for the proposal. Fred Lundgren (Lundgren) filed a counterproposal requesting the allotment of Channel 223A to Hallettsville, Texas, as a first local FM service.[2] Martha Ann Vasquez (Vasquez), submitted a "Petition to Deny" and reply comments. Petitioner submitted reply comments and a response to Vasquez's reply comments.[3] Petitioner and Wilson County Broadcasting Company (Wilson County), submitted late-filed reply comments.[4]

2. Lundgren's counterproposal for the allotment of Channel 223A to Hallettsville is mutually exclusive with the proposed substitution of Channel 223A at Yoakum. Lundgren contends that a first FM allotment at Hallettsville should be favored over the Yoakum proposal. He states his intention to apply for the channel, if allotted to Hallettsville. Lundgren provided information in support of his proposal.

3. Vasquez, an applicant for Channel 222A at Victoria, Texas, claims her application has been prejudiced by the proposed substitution of Channel 223A at Yoakum. She states that the proposal is short-spaced to her preferred site for the new station at Victoria. Vasquez indicates that plans are underway for a "Victoria market tall tower" which would prove cost effective for construction of facilities in the area. Vasquez wishes to utilize the tall tower, and urges the Commission to consider an alternative channel at Yoakum to avoid the conflict.

4. In reply comments, petitioner states that there is no merit to the arguments raised by Vasquez. Petitioner points to the fact that subsequent to the filing of Vasquez' opposition the tall tower application, which it had hoped to use, was dismissed. It further states that the premise for Vasquez's opposition has disappeared since the tall tower application has been dismissed. Furthermore, petitioner asserts that Vasquez consequently filed its application specifying a site which is "fully-spaced" to the proposed Yoakum site.

DISCUSSION

5. A staff engineering analysis has determined that Channel 260A can be allotted to Hallettsville, Texas, consistent with the Commission's minimum distance separation requirements with a site restriction of 11.5 kilometers (7.2 miles) east of Hallettsville.[5] The restriction is necessary in order to avoid short spacings to Station KROB-FM, Channel 260C1 at Robstown, Texas, and a construction permit for Station WACO-FM, Channel 260C at Waco, Texas. Therefore, we are no longer confronted with the need to address conflicting proposals at Hallettsville and Yoakum, thereby removing the counterproposal as an obstacle to the upgrade proposal at Austin.

6. We have considered the argument advanced by Vasquez and conclude it lacks merit, based on the dismissal of the tall tower application the objection relies on, and our general policy of according a mere site preference little weight vis-a-vis a rule making proposal that would provide new or enhanced service. Thus, on the basis of the aforementioned, the Commission believes the public interest would be served by substituting Channel 272C2 for Channel 272A at Austin, Texas, providing that community with expanded FM coverage. Channel 272C2 can be allotted to Austin in compliance with the Commission's minimum distance spacing requirements with a site restriction and provided Channel 223A is substituted for Channel 272A at Yoakum, Texas. Petitioner suggested a site 13.0 kilometers (8.1 miles)[6] southwest of the city to avoid Station KJNE(FM), Channel 273C at Hillsboro, Texas, and Channel 219A, Hornsby, Texas.[7] Channel 223A at Yoakum requires a site restriction 11.1 kilometers (6.9 miles) northwest of the city to avoid short spacings to vacant and applied for Channel 222A at Victoria, Texas and pending applications for Channel 223A at Elgin, Texas.[8] Both parties have agreed to relocate their stations' current transmitter sites to effectuate the upgrade.

7. Since Austin and Yoakum are located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence in the proposal has been obtained from the Mexican government.

8. As required by Commission policy, petitioner has stated its willingness to reimburse Station KYOC(FM) for reasonable costs of changing frequencies.

9. As requested, we are modifying the license of Station WPEZ(FM) to specify operation on Channel 272C2 in lieu of Channel 272A, in accordance with Section 1.420(g) of the Commission's Rules.

10. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **April 10, 1989,** the FM Table

of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Austin, Texas	229C, 238C, 251C1, 264C, 272C2
Hallettsville, Texas	260A
Yoakum, Texas	223A

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Clear Channel Communications, Inc., for Station KPEZ(FM), Austin, Texas, IS MODIFIED, to specify operation on Channel 272C2 in lieu of Channel 272A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Coastal Broadcasting, Inc., for Station KYOC(FM), Yoakum, Texas, IS MODIFIED, to specify operation on Channel 223A in lieu of Channel 272A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

13. The window period for filing applications for Channel 260A at Hallettsville, Texas, will open on **April 11, 1989, and close on May 11, 1989.**

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Hallettsville, Texas, has been added to the caption.

[2] Public Notice of the counterproposal was given on July 6, 1988, Report No. 1736.

[3] Although the reply comments were not timely filed in accordance with the dates set forth in the *Notice*, they were filed prior to the date established in the counterproposal notice. In addition they were accompanied by motions for acceptance of the late-filed pleadings. Therefore, consideration will be given to those reply comments.

[4] On July 20, 1988, petitioner requested a 30-day extension of time, from July 21, 1988, to August 22, 1988, for filing additional reply comments to Lundgren's counterproposal. Petitioner states that the additional time is necessary in order for its recently retained counsel to confer with parties in the proceeding and adequately prepare a response to the counterproposal. Petitioner states that the change in legal representation was due to the unexpected and unanticipated withdrawal of its former counsel from this proceeding on July 20, 1988, because of a potential conflict of interest. Section 1.46 of the Commission's Rules requires that motions for extension of time be filed at least 7 days prior to the filing date. In view of the fact that petitioner did not state emergency circumstances, and the fact that the 30-day extension requested is not the brief extension contemplated, where emergency circumstances exist, by Section 1.46 of the rules, we will deny the request for extension of time. Additionally, Wilson County's reply comments, although filed on the date requested by petitioner for an extended pleading cycle, will not be considered in this proceeding. Wilson County provided no independent justification as to why its pleading could not be timely filed.

[5] The restricted site coordinates are 29-25-46 and 96-49-25.

[6] The *Notice* incorrectly specified a site restriction of 8.4 kilometers (5.2 miles) southwest of the city.

[7] The restricted site coordinates are 30-11-53 and 97-50-06.

[8] The coordinates are 29-20-29 and 97-14-54. It should be noted that this restricted site is not as was proposed in the *Notice*.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-42

In the Matter of

Amendment of Section 73.202(b), RM-6508
Table of Allotments,
FM Broadcast Stations.
(Bolivar, Tennessee)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 30, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Opel J. Shaw (petitioner)[1] the Commission has before it for consideration a petition for rule making seeking the allotment of Channel 234A to Bolivar, Tennessee, as that community's second local FM service. Petitioner states an intention to apply for the channel, if allotted. Channel 234A can be allotted to Bolivar in compliance with the Commission's minimum distance separation requirements.[2]

2. In view of the fact that Bolivar, Tennessee, could receive its second local FM channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Bolivar, Tennessee	244A	234A, 244A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **April 17, 1989,** and reply comments on or before **May 2, 1989,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Opel J. Shaw
P. O. Box 191
Bolivar, TN 38008
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Petitioner is the co-licensee of AM Station WBOL at Bolivar, Tennessee.

[2] The reference coordinates are 35-15-30 and 88-59-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-43

In the Matter of

Amendment of Section 73.202(b),	RM-6549
Table of Allotments,	
FM Broadcast Stations.	
(Aberdeen, Washington)	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 30, 1989; Released: February 24, 1989

By the Deputy Chief, Policy and Rules Division:

1. At the request of Pioneer Broadcasting Company, Inc. (petitioner), licensee of Station KDUX-FM, Channel 284C2[1] at Aberdeen, Washington, the Commission considers herein a petition for rule making seeking the substitution of Channel 284C for Channel 284C2 and modification of its license to specify operation on the higher class co-channel. Petitioner provided information in support of its proposal to provide Aberdeen with its first wide coverage area FM broadcast station.

2. The substitution can be made consistent with the Commission's minimum separation requirements at the site specified by the petitioner. Petitioner's specified site is 7.7 kilometers (4.8 miles) southeast of the city.[2] Aberdeen is located within 320 kilometers (200 miles) of the U.S.-Canadian border, therefore, Candian concurrence must be obtained for the proposal.

3. As requested, we shall propose to modify the license for Channel 284C2 at Aberdeen, Washington, to specify operation on Channel 284C. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest nor require that the petitioner demonstrate the availability of an additional equivalent channel at Aberdeen.

4. Accordingly, in order to provide Aberdeen with expanded FM service, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Aberdeen, Washington	257A, 284C2	257A[3], 284C

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 17, 1989**, and reply comments on or before **May 2, 1989**, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Paul J. Berman, Esquire
Debra Ann Palmer, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P. O. Box 7566
Washington, D. C. 20044
(Counsels for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Petitioner has an outstanding construction permit for operation as a Class C1 facilities (BPH-870227II).

[2] The restricted site coordinates are 46-54-51 and 123-47-06.

[3] In a separate proceeding (RM-6351) the Commission has under consideration a proposal to substitute Channel 257C1 for Channel 257A at Aberdeen, Washington.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67, and 69 of the FCC's Rules)

ERRATA

Released: February 8, 1989

By the Chief, Common Carrier Bureau:

1. A number of minor technical changes have been made to correct errors in the date, instructions and specifications contained in the USOA Report Order, (FCC Report 43-02), released January 6, 1989 (DA 88-2066). Minor technical corrections have also been made to the Joint Cost Report Order (FCC Report 43-03), released January 6, 1989 (DA 89-11). The attached pages replace the appendices for the USOA Report Order and the Joint Cost Report Order in their entirety. Revised pages are indicated as such by "Rev." in the upper right corner of those pages.

2. The specific changes to the USOA Report Order are as follows:

(1) The release date of this Order is revised to read "January 6, 1989".

(2) A paragraph is inserted in the row instructions to provide additional general instructions for filing the USOA Report.

(3) Note 1 is added to the row instructions to clarify that both Class A and Class B reporting is provided for in the USOA Report.

(4) Note 2 is added to the row instructions to explain the replacement of Account 7991 with Account 5280. The account title on row 5280 is changed from "Other Nonregulated Revenue" to "Nonregulated Revenue".

(5) The title of row 210 is changed from "Total Regulated Plant" to "Total Plant".

(6) Row 5100 is revised to accommodate only Class A companies and moved to the appropriate level on the chart. The Class A Account 5100 is not a summary account. Row 525 is added for reporting the amount in the Class B Account 5100 for both Class A and Class B companies.

(7) The instructions for rows 5100 and 525 are revised to accommodate the above changes.

(8) A sentence is inserted in the Report Definition to clarify that amounts reported are account balances as of the last day of the reporting period (December 31, 19XX), unless otherwise indicated.

(9) The instructions for row 530 are revised to subtract the Uncollectible Revenue item.

(10) A sentence is added to the instructions for row 7200 to clarify that credit balances should be subtracted.

(11) Account 1220 is retitled "Inventories".

(12) "N/A" is inserted in the "Rents" column for rows 6511 through 6530.

(13) "N/A" is deleted from the "Other Expenses" column for accounts 6561 through 6565 and 6560.

(14) "N/A" is inserted in the "Rents" column for row 690.

(15) The instructions for row 2310 are revised to read, "For Class A companies this amount equals the total of Row/Account 2311 through 2362. For Class B companies this amount equals the balance of account 2310."

(16) The instructions for row 350 are revised to read, "This amount equals row 210 less 340".

(17) "N/A" is deleted in the "Other Expenses" column in row 6790.

(18) The instructions for row 2410 are revised to read, "For Class A companies this amount equals the total of Row/Account 2411 through 2441. For Class B companies this amount equals the balance of account 2410".

(19) Instructions for column (ae) are inserted.

(20) The account title for row 4050 is retitled "Current Maturities-Long Term Debt".

3. The specific revisions to the Joint Cost Report Order are as follows:

(1) The last sentence of paragraph 3 of the Order is amended to read, "In addition, we are denying one minor, technical request that was raised in the petitions for reconsideration".

(2) Paragraph 8 is amended to read, "In its petition for reconsideration of the *ARMIS Order*, Pacific Bell requests that we clarify the means of reporting the allocation of central office equipment between a carrier's regulated and nonregulated operations. We clarify that these amounts are to be reported in accordance with allocation based on forecasted use, in accordance with Part 64 of the Commission's Rules."[1]

(3) A sentence is inserted in the Report Definition to clarify that amounts reported are account balances as of the last day of the reporting period (December 31, 19XX), unless otherwise indicated.

(4) The general instructions paragraph in the row instructions are revised to read, "Every row item is not described below. Those rows omitted from the following instructions are Part 32 accounts and the amounts entered for those accounts should be reported pursuant to our Part 32 rules. The following

descriptions apply to those rows that are summarizations or that need further clarification. Four digit row numbers indicate that there is a Part 32 account bearing the same number and title. Unless otherwise, indicated, three digit row numbers indicate that there is no comparable Part 32 account."

(5) Row 510 has been inserted for reporting the Class A level account 5000. The instructions for this row read, "For Class A companies this amount equals the total of Row/Account 5001 through 5004 (the balance of account 5000 for Class A companies)".

(6) Row 5000 has been renumbered and is now row 520. The instructions for this row are revised to read, "For Class A companies this amount equals the total of Row/Account 510, 5010, 5040, 5050, 5060 and 5069. For Class B companies this amount equals the balance of account 5000".

(7) A new row 5100 is inserted in the appropriate space for the Class A account, "Long Distance Message Revenue". The instructions for this row read, "Long Distance Message Revenue (Class A companies only) - Class A companies should enter the balance of the Class A level account 5100".

(8) The old row 5100 is renumbered as row 525 and retitled "Long Distance Network Services Revenue" (Class B account 5100). The instructions for this row read, "Row 525 should be populated by both Class A and Class B companies. For Class A companies this amount is the total of Row/Account 5100, 5110, 5120, 5160 and 5169. For Class B companies this amount is the balance of account 5100".

(9) Row 5260 instructions are revised to read, "This amount is the total of rows 5261 through 5269".

(10) Instructions are inserted for Row/Account 6310. The instructions read, " *Information Origination / Termination* - This amount equals the total of rows 6311 through 6362".

(11) Row 740 is eliminated.

(12) Row 750 instructions are revised to read, "This amount is the total of rows 6110, 6120, 6210, 6220, 6230, 6310, 6410, 6510, 6530, 6540, 6560, 6610, 6620, 6710, 6720 and 6790, plus or minus 7100, plus 7200, plus or minus 7300, plus 7500, plus or minus 7600, 7910 and 7990".

(13) The instructions for row 495 are revised to read, "This amount equals the total of rows 3100, 3200, 3400, 3500, 3600, 4100, 4340, 4040, 4120, 4360 and 4370".

(14) The column instructions for column (e) are revised to read, "This amount reflects that portion of each itemized account that is allocated to regulated activities based on a direct or indirect measure of cost causation".

(15) The column instructions for column (f) are revised to read, "This amount reflects that portion of each itemized account that is allocated to nonregulated activities based on a direct or indirect measure of cost causation".

(16) "N/As" are inserted for regulated revenues in columns (d) through (h), column (j), and column (l).

(17) "N/As" are inserted for nonregulated revenues in columns (c), (e) through (i) and (k) and (l).

(18) Other Nonregulated Revenue is retitled "Nonregulated Revenue".

(19) "N/As" are deleted on row 6511 in columns (d), (f), (h) and (j).

(20) Rows 7410, 7420, 7430, 7440, 7450 and 7400 are eliminated.

(21) "N/As" are inserted on row 7910 in columns (d) through (h), (j) and (k).

(22) "N/As" are inserted on row 750 in columns (k) through (m).

(23) "Cash Working Capital" is retitled "Interstate Cash Working Capital".

(24) "N/As" are deleted from columns (d), (f), (g) and (j) on row 2002.

(25) "N/As" are deleted from columns (d), (f), (g) and (j) through (l) on row 2005.

(26) "N/As" are deleted from columns (d), (f), (g) and (j) on row 3200.

(27) Row 4030 is eliminated.

(28) "N/As" are deleted from columns (d), (f), (h) and (j) on row 6511.

(29) "N/As" are inserted in certain rows in column (l).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] *See* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *recon.*, 2 FCC Rcd 6283 (1987) (*Reconsideration Order*), *further recon.*, 3 FCC Rcd 6701 (1988) (*Further Reconsideration Order*), *petitions for review pending*, Southwestern Bell Corp. v. FCC, No. 87-1764 (D.C. Cir. December 15, 1987); National Tel. Cooperative Ass'n v. FCC, D.C. Circuit No. 87-1771 (filed Dec. 15, 1987).

APPENDIX

This document provides the instructions for FCC Report 43-02, the ARMIS USOA Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-02, the ARMIS USOA Report, to the Commission.

B. General Information

1. FCC Report 43-02 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues in excess of $100 million.

2. Affected carriers carrier shall file by April 1 of each year the report for the previous calendar year. The inital report will be filed by April 1, 1989 and will contain data for the calendar year 1988.

3. The report shall be filed on an operating company basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-02, which identifies the filing as the ARMIS USOA Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required operating company reports, a carrier submits a report which combines data for more than one operating company, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-02 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the occasioning facts.

2. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-02. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-02 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 23 of the attached Paper Report Specifications.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-02, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-02 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-02 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
3060-0395
Expires 10/31/90
Estimated Average Burden Hours Per Response: 115 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-02, the ARMIS USOA Report, and lists the company level USOA data which must be provided annually. It contains the following:

	Pages
Table I - Balance Sheet Accounts	2 thru 4
Table II - Income Statement Accounts	5 thru 8
Row and Column Descriptions	9 thru 14
Certification	15

All amounts must be rounded to the nearest thousand dollars. Unless otherwise indicated, account balances must reflect the results of operations as of the end of the reporting period (December 31, 19xx).

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS USOA Report collects the operating results of the carriers' total activities for every account in the USOA, as specified in Part 32 of the Commission's Rules. The ARMIS USOA Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (a)	Amount (b)
	Current Assets	
1130	Cash	
1140	Special cash deposits	
1150	Working cash advances	
1160	Temporary investments	
1120	Cash and equivalents	
1180	Telecommunications accounts receivable	
1181	Accounts receivable allowance-telecommunications	
1190	Other accounts receivable	
1191	Accounts receivable allowance-other	
1200	Notes receivable	
1201	Notes receivable allowance	
1210	Interest and dividends receivable	
1220	Inventories	
120	Total Noncash current (excluding prepayments)	
1290	Prepaid rents	
1300	Prepaid taxes	
1310	Prepaid insurance	
1320	Prepaid directory expenses	
1330	Other prepayments	
1280	Prepayments	
1350	Other Current Assets	
130	Total Current Assets	
	Noncurrent Assets	
1401	Investments in affiliated companies	
1402	Investments in nonaffiliated companies	
1406	Nonregulated investments	
1407	Unamortized debt issuance expense	
1408	Sinking funds	
1410	Other noncurrent assets	
1438	Deferred maintenance and retirements	
1439	Deferred charges	
1500	Other jurisdictional assets-net	
150	Total Noncurrent Assets	

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm YYYY To mmm YYYY
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (aa)	Beginning Balance (ab)	Additions (ac)	Retirements (ad)	Transfers/ Adjustments (ae)	Ending Balance (af)
	Plant					
2001	TPIS					
2002	PHPTU					
2003	TPUC-short term					
2004	TPUC-long term					
2005	Telecom plant adjstmnt					
2006	Nonoperating plant					
2007	Goodwill					
210	Total Plant					
	TPIS - General Support					
2111	Land					
2112	Motor vehicles					
2113	Aircraft					
2114	Special purpose vehic					
2115	Garage work equipment					
2116	Other work equipment					
2121	Buildings					
2122	Furniture					
2123	Office Equipment					
2124	Gen purpose computers					
2110	Land & Support					
	TPIS - Central Office					
2211	Analog elec switch					
2212	Digit elec switch					
2215.1	Step-by-step switching					
2215.2	Crossbar switching					
2215.3	Other elec-mechan sw					
2215	Electro-mechan sw					
2210	Cen Office-Sw					
2220	Operator sys					
2231.1	Satellite & earth sta					
2231.2	Other radio facilities					
2231	Radio systems					
2232	Circuit equipment					
2230	Transmission					
	TPIS - IOT					
2311	Station apparatus					
2321	Customer premise wire					
2341	Large PBX					
2351	Publ tel trmnal equip					
2362	Other terminal equip					
2310	IOT					
	TPIS - Cable & Wire					
2411	Poles					
2421	Aerial cable					
2422	Underground cable					
2423	Buried cable					
2424	Submarine cable					
2425	Deep sea cable					
2426	Intrabldg network cble					
2431	Aerial wire					
2441	Conduit systems					
2410	Cable & Wire					
	TPIS - Amortiz Assets					
2681	Capital Leases					
2682	Leasehold Improvements					
2680	Amort Tangible					
2690	Intangibles					
260	Total TPIS					

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (ba)	Amount (bb)
	Depreciation and Amortization	
3100	Accumulated depreciation	
3200	Accumulated depreciation - PHPTU	
3300	Accumulated depreciation - Nonoperating	
3410	Accumulated amortization - Capitalized leases	
3420	Accumulated amortization - Leasehold improvements	
3400	Accumulated amortization - Tangible	
3500	Accumulated amortization - Intangible	
3600	Accumulated amortization - Other	
340	Total Depreciation and Amortization	
350	Net Plant	
360	Total Assets	
	Current Liabilities	
4010	Accounts Payable	
4020	Notes payable	
4030	Advanced billing and payments	
4040	Customer's deposits	
4050	Current maturities - long-term debt	
4060	Current maturities - capital leases	
4070	Income taxes - accrued	
4080	Other taxes - accrued	
4100	Net current deferred operating income taxes	
4110	Net current deferred nonoperating income taxes	
4120	Other accrued liabilities	
4130	Other current liabilities	
410	Total Current Liabilities	
	Long-Term Debt	
4210	Funded debt	
4220	Premium on long-term debt	
4230	Discount on long-term debt	
4240	Reacquired debt	
4250	Obligations under capital leases	
4260	Advances from affiliated companies	
4270	Other long-term debt	
420	Total Long-Term Debt	
	Other Liabilities and Deferred Credits	
4310	Other long-term liabilities	
4320	Unamortized operating investment tax credits - net	
4330	Unamortized nonoperating investment tax crs - net	
4340	Net noncurrent deferred operating income taxes	
4350	Net noncurrent deferred nonoperating income taxes	
4360	Other deferred credits	
4370	Other jurisdictional liabilities/deferred crs - net	
430	Total Other Liabilities and Deferred Credits	
	Stockholders' Equity	
4510	Capital stock	
4520	Additional paid-in capital	
4530	Treasury stock	
4540	Other Capital	
4550	Retained earnings	
440	Total Stockholders' Equity	
450	Total Liabilities & Stockholders' Equity	
460	Retained Earnings (Beginning of Year)	
465	Net Income	
470	Dividends Declared	
475	Miscellaneous Debits	
480	Miscellaneous Credits	
490	Retained Earnings (End of Year)	

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (a)	Amount (b)
	REVENUE ACCOUNTS	
	Local Network Service Revenues	
5001	Basic area revenue	
5002	Optional extended area revenue	
5003	Cellular mobile service revenue	
5004	Other mobile service revenue	
510	Basic local service rev (Class A Account 5000)	
5010	Public telephone revenue	
5040	Local private line revenue	
5050	Customer premises revenue	
5060	Other local exchange revenue	
5069	Other local exchange revenue settlements	
520	Basic local service revenue	
	Network Access Services Revenues	
5081	End user revenue	
5082	Switched access revenue	
5083	Special access revenue	
5084	State access revenue	
5080	Network access revenue	
	Long Distance (LD) Network Services Revenues	
5100	LD Message Revenue (Class A)	
5111	LD inward-only revenue	
5112	LD outward-only revenue	
5110	Unidirectional LD Revenue	
5121	Subvoice grade LD private network revenue	
5122	Voice grade LD private network revenue	
5123	Audio program grade LD private network revenue	
5124	Video program grade LD private network revenue	
5125	Digital transmission LD private network revenue	
5126	LD private network switching revenue	
5128	Other LD private network revenue	
5129	Other LD private network revenue settlements	
5120	Long distance private network revenue	
5160	Other long distance revenue	
5169	Other long distance revenue settlements	
525	LD Network Services Revenues	
	Miscellaneous Revenues	
5230	Directory revenue	
5240	Rent revenue	
5250	Corporate operations revenue	
5261	Special billing arrangements revenue	
5262	Customer operations revenue	
5263	Plant operations revenue	
5264	Other incidental regulated revenue	
5269	Other revenue settlements	
5260	Miscellaneous revenues (Class A)	
5270	Carrier billing and collection revenue	
5280	Nonregulated revenue	
5200	Miscellaneous revenues	
	Uncollectible Revenues	
5301	Uncollectible revenue-telecommunications	
5302	Uncollectible revenue-other	
5300	Uncollectible revenue	
530	Total Operating Revenues	

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ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE II

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
	EXPENSE ACCOUNTS					
	Plant Specific Ops					
6112	Motor vehicle					
610	Clearance - MV					
615	Net Balance - MV					
6113	Aircraft					
620	Clearance - Aircr					
625	Net Balance - Aircr					
6114	Special purpose vehicle					
630	Clearance - SPV					
635	Net Balance - SPV					
6115	Garage work equipment					
6116	Other work equipment					
640	Clearance - OWE					
645	Net Balance - OWE					
6110	Network support					
6121	Land & building					
6122	Furniture & artworks					
6123	Office equipment					
6124	Gen purpose computers					
6120	General support					
6211	Analog electronic					
6212	Digital electronic					
6215	Electro-mechanical					
6210	Cntrl Office Sw					
6220	Operator systems					
6231	Radio systems					
6232	Circuit equipment					
6230	Cntrl office Tr					
6311	Station apparatus					
6341	Large PBX					
6351	Public tel tmnl equip					
6362	Other terminal equip					
6310	IOT expense					
6411	Poles					
6421	Aerial cable					
6422	Underground cable					
6423	Buried cable					
6424	Submarine cable					
6425	Deep sea cable					
6426	Intrabldg network cable					
6431	Aerial wire					
6441	Conduit Systems					
6410	Cable & Wire					
650	Total Plant Spc					
	Plant Nonspecific Ops					
6511	PMETV				N/A	
6512	Provisioning				N/A	
660	Clearance - Prov				N/A	
665	Net Balance - Prov				N/A	
6510	Other PP&E Exp				N/A	
6531	Power				N/A	
6532	Network administration				N/A	
6533	Testing				N/A	
6534	Plant ops admin				N/A	
670	Clearance - POA				N/A	
675	Net Balance - POA				N/A	
6535	Engineering				N/A	
680	Clearance - Eng				N/A	
685	Net Balance - Eng				N/A	
6530	Network Ops				N/A	

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	Rents	Other Expenses
	(aa)	(ab)	(ac)	(ad)	(ae)	(af)
	Customer Operations					
6611	Product management				N/A	
6612	Sales				N/A	
6613	Product Advertising				N/A	
6610	Marketing Expense				N/A	
6621	Call Completion				N/A	
6622	Number Services				N/A	
6623	Customer Services				N/A	
6620	Services Expense				N/A	
700	Total Cust Ops				N/A	
	Corporate Operations					
6711	Executive				N/A	
6712	Planning				N/A	
6710	Exec & Planning				N/A	
6721	Accounting & finance				N/A	
6722	External relations				N/A	
6723	Human resources				N/A	
6724	Information management				N/A	
6725	Legal				N/A	
6726	Procurement				N/A	
6727	Research & development				N/A	
6728	Other general & admin				N/A	
6720	General & Admin				N/A	
6790	Provis uncollect notes		N/A	N/A	N/A	
710	Total Corp Ops				N/A	
720	Total Ops Exp					
730	Net Ops Rev					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title (ba)	Amount (bb)
	Other Operating Income and Expense	
7110	Income from custom work	
7130	Return from nonreg use of regulated facilities	
7140	Gains/losses from foreign exchange	
7150	Gains/losses from disposition of land & artworks	
7160	Other operating gains and losses	
7100	Other operating income and expenses	
	Operating Taxes	
7210	Operating investment tax credits-net	
7220	Operating federal income taxes	
7230	Operating state and local income taxes	
7240	Operating other taxes	
7250	Provision for deferred operating income tax-net	
7200	Operating Taxes	
	Nonoperating Income and Expense	
7310	Dividend income	
7320	Interest income	
7330	Income from sinking and other funds	
7340	Allowance for funds used during construction(AFUDC)	
7350	Gains/losses from the disposition of property	
7360	Other nonoperating income	
7370	Special charges	
7300	Nonoperating Income and Expense	
	Nonoperating Taxes	
7410	Nonoperating investment tax credits-net	
7420	Nonoperating federal income taxes	
7430	Nonoperating state and local income taxes	
7440	Nonoperating other taxes	
7450	Provision for deferred nonoperating income tax-net	
7400	Nonoperating Taxes	
	Interest and Related Items	
7510	Interest on funded debt	
7520	Interest expense-capital leases	
7530	Amortization of debt issuance expense	
7540	Other interest deductions	
7500	Interest and Related Items	
	Extraordinary Items	
7610	Extraordinary income credits	
7620	Extraordinary income charges	
7630	Current inc tax effect of extraordinary items-net	
7640	Provision for deferred inc tax effect of items-net	
7600	Extraordinary Items	
	Jurisdictional Differences & Nonregulated Income	
7910	Income effects of jurisdictional differences-net	
7990	Nonregulated net income	
790	Net Income	

ROW INSTRUCTIONS

Every row item is not described below. Those rows omitted from the following instructions are Part 32 accounts and the amounts entered for these accounts should be reported pursuant to our Part 32 Rules. The following descriptions apply to those rows that are summarizations or need further clarification. Four digit row numbers indicate that there is a Part 32 account bearing the same number and title. Unless otherwise indicated, three digit row numbers indicate that there is no comparable Part 32 account.

TABLE I - BALANCE SHEET ACCOUNTS

1120. Cash and Equivalents - For Class A companies this amount equals the total of Row/Account 1130 through 1160. For Class B companies this amount equals the balance of account 1120.

120. Total Noncash current (excluding prepayments) - This amount equals the total of Row/Account 1180 through 1220.

1280. Prepayments - For Class A companies this amount equals the total of Row/Account 1290 through 1330. For Class B companies this amount equals the balance of account 1280.

130. Total Current Assets - This amount equals the total of Row/Account 1120, 120, 1280 and 1350.

150. Total Noncurrent Assets - This amount equals the total of Row/Account 1401 through 1500.

210. Total Plant - This amount equals the total of Row/Account 2001 through 2007.

2110. Land and Support - For Class A companies this amount equals the total of Row/Account 2111 through 2124. For Class B companies this amount equals the balance of account 2110.

2215. Electro-mechanical Switching - This amount equals the total of Row/Account 2215.1 through 2215.3.

2210. Central Office - Switching - For Class A companies this amount equals the total of Row/Account 2211, 2212 and 2215. For Class B companies this amount equals the balance of account 2210.

2231. Radio Systems - This amount equals the total of Row/Account 2231.1 and 2231.2.

2230. Transmission - For Class A companies this amount equals the total of Row/Account 2231 and 2232. For Class B companies this amount equals the balance of account 2230.

2310. Information Origination/Termination - For Class A companies this amount equals the total of Row/Account 2311 through 2362. For Class B companies this amount equals the balance of account 2310.

2410. Cable and Wire Facilities - For Class A companies this amount equals the total of Row/Account 2411 through 2441. For Class B companies this amount equals the balance of account 2410.

2680. Amortizable Tangible Assets - For Class A companies this amount equals the total of Row/Account 2681 and 2682. For Class B companies this amount equals the balance of account 2680.

260. Total Telecommunications Plant-in-Service - This amount equals the total of Row/Account 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690.

3400. Accumulated Amortization-Tangible - For Class A companies this amount equals the total of Row/Account 3410 and 3420. For Class B companies this amount equals the balance of account 3400.

340. Total Depreciation and Amortization - This amount equals the total of Row/Account 3100, 3200, 3300, 3400, 3500 and 3600.

350. Net Plant - This amount equals row 210 less 340.

360. Total Assets - This amount equals the total of Row/Account 130, 150, and 350.

410. Total Current Liabilities - This amount equals the total of Row/Account 4010 through 4130.

420. Total Long Term Debt - This amount equals the total of Row/Account 4210 through 4270.

430. Total Other Liabilities and Deferred Credits - This amount equals the total of Row/Account 4310 through 4370.

440. Total Stockholders' Equity - This amount equals the total of Row/Account 4510 through 4550.

450. Total Liabilities and Stockholders' Equity - This amount equals the total of Row/Account 410, 420, 430 and 440.

490. Retained Earnings (End of Year) - This amount equals the net amount of Row/Account 460 through 480.

TABLE II - INCOME STATEMENT ACCOUNTS

510. Basic Local Service Revenue (Class A Account 5000) - For Class A companies this amount equals the total of Row/Account 5001 through 5004 (the balance of account 5000 for Class A companies).

520. Basic Local Service Revenue - For Class A companies this amount equals the total of Row/Account 510, 5010, 5040, 5050, 5060, and 5069. For Class B companies this amount equals the balance of account 5000.

5080. Network Access Revenue - This amount equals the total of Row/Account 5081 through 5084.

5100 Long Distance Message Revenue (Class A companies only) - Class A companies should enter the balance of the Class A level account 5100.

5110. Unidirectional Long Distance Revenue - For Class A companies this amount equals the total of Row/Account 5111 and 5112.

5120. Long Distance Private Network Revenue - For Class A companies this amount equals the total of Row/Account 5121 through 5129.

525 Long Distance Network Services Revenues - Row 525 should be populated by both Class A and Class B companies. For Class A companies this amount equals the total of Row/Account 5100, 5110, 5120, 5160 and 5169. For Class B companies this amount equals the balance of account 5100.

5260. Miscellaneous Revenue (Class A Companies Only) - This amount equals the total of Row/Account 5261 through 5269.

5200. Miscellaneous Revenue - For Class A companies this amount equals the total of Row/Account 5230, 5240, 5250, 5260, 5270 and 5280. For Class B companies this amount equals the balance of account 5200.

5300. Uncollectible Revenue - For Class A companies this amount equals the total of Row/Account 5301 and 5302. For Class B companies this amount equals the balance of account 5300.

530. Total Operating Revenues - This amount equals the total of Row/Account 520, 5080, 5100, 5200 less 5300.

615. Net Balance-MV - For Class A companies this amount equals the net of Row/Account 6112 and 610.

625. Net Balance-Aircraft - For Class A companies this amount equals the net of Row/Account 6113 and 620.

635. Net Balance-SPV - For Class A companies this amount equals the net of Row/Account 6114 and 630.

645. Net Balance-OWE - For Class A companies this amount equals the net of Row/Account 6116 and 640.

6110. Network Support - For Class A companies this amount equals the total of Row/Account 615, 625, 635, 6115 and 645. For Class B companies this amount equals the balance of account 6110.

6120. General Support - For Class A companies this amount equals the total of Row/Account 6121 through 6124. For Class B companies this amount equals the balance of account 6120.

6210. Central Office-Switching - For Class A companies this amount equals the total of Row/Account 6211 through 6215. For Class B companies this amount equals the balance of account 6210.

6230. Central Office Transmission - For Class A companies this amount equals the total of Row/Account 6231 and 6232. For Class B companies this amount equals the balance of account 6230.

6310. Information Origination/Termination - For Class A companies this amount equals the total of Row/Account 6311 through 6362. For Class B companies this amount equals the balance of account 6310.

6410. Cable and Wire Facilities - For Class A companies this amount equals the total of Row/Account 6411 through 6441. For Class B companies this amount equals the balance of account 6410.

650. Total Plant Specific Operating Expenses - This amount equals the total of Row/Account 6110, 6120, 6210, 6220, 6230, 6310 and 6410.

665. Net Balance-Prov - For Class A companies this amount equals the net of Row/Account 6512 and 660.

6510. Other Property Plant and Equipment - For Class A companies this amount equals the total of Row/Account 6511 and 665. For Class B companies this amount equals the balance of account 6510.

675. Net Balance-POA - For Class A companies this amount equals the net of Row/Account 6534 and 670.

685. Net Balance-Eng - For Class A companies this amount equals the net of Row/Account 6535 and 680.

6530. Network Operations - For Class A companies this amount equals the total of Row/Account 6531, 6532, 6533, 675, and 685. For Class B companies this amount equals the balance of account 6530.

6560. Depreciation and Amortization - For Class A companies this amount equals the total of Row/Account 6561 through 6565. For Class B companies this amount equals the balance of account 6560.

690. Total Plant Non-Specific Expenses - This amount equals the total of Row/Account 6510, 6530, 6540 and 6560.

6610. Customer Operations-Marketing - For Class A companies this amount equals the total of Row/Account 6611 through 6613. For Class B companies this amount equals the balance of account 6610.

6620. Customer Operations-Services - For Class A companies this amount equals the total of Row/Account 6621 through 6623. For Class B companies this amount equals the balance of account 6620.

700. Total Customer Operations - This amount equals the total of Row/Account 6610 and 6620.

6710. Executive and Planning - For Class A companies this amount equals the total of Row/Account 6711 and 6712. For Class B companies this amount equals the balance of account 6710.

6720. General and Administrative - For Class A companies this amount equals the total of Row/Account 6721 through 6728. For Class B companies this amount equals the balance of account 6720.

710. Total Corporate Operations - This amount equals the total of Row/Account 6710, 6720 and 6790.

720. Total Operating Expenses - This amount equals the total of Row/Account 650, 690, 700 and 710.

730. Net Operating Revenue - This amount equals the net of Row/Account 530 and 720.

7100. Other Operating Income and Expenses - For Class A companies this amount equals the total of Row/Account 7110 through 7160. For Class B companies this amount equals the balance of account 7100.

7200. Operating Taxes - For Class A companies this amount equals the total of Row/Account 7210 through 7250. For Class B companies this amount equals the balance of account 7200. Credit balances should be subtracted.

7300. Nonoperating Income and Expense - For Class A companies this amount equals the total of Row/Account 7310 through 7370. For Class B companies this amount equals the balance of account 7300.

7400. Nonoperating Taxes - For Class A companies this amount equals the total of Row/Account 7410 through 7450. For Class B companies this amount equals the balance of account 7400.

7500. Interest and Related Items - For Class A companies this amount equals the total of Row/Account 7510 through 7540. For Class B companies this amount equals the balance of account 7500.

7600. Extraordinary Items - For Class A companies this amount equals the total of Row/Account 7610 through 7640. For Class B companies this amount equals the balance of account 7600.

790. Net Income - This amount equals the net of Row/Account 730, 7100, 7200, 7300, 7400, 7500, 7600, 7910 and 7990.

NOTE 1: Class B companies should enter Class B Account balances in the appropriate rows and "N/A" in all columns of the Class A level rows. Unless otherwise indicated, Class A companies must enter data in every row, including the Class B level accounts.

NOTE 2: Account 5280 will replace Account 7991, effective May 22, 1989. Until that date, row 5280 must be populated with the balance of account 7991.

COLUMN INSTRUCTIONS

TABLE I - BALANCE SHEET ACCOUNTS

1. On page 2, respondents shall enter in column (b), the ending account balances for the accounts identified in column (a) for the reporting period.

2. On page 3, respondents shall enter for each account identified in column (aa): in column (ab) the balance recorded in that account at the beginning of the reporting period; in column (ac) the dollar amount representing plant added during the reporting period; in column (ad) the dollar amount representing plant retired during the reporting period; in column (ae) the dollar amount representing transfers of plant or adjustments made to plant during the reporting period; and, in column (af) the account balance at the end of the reporting period.

3. On page 4, respondents shall enter in column (bb), the ending balances for the accounts identified in column (ba) for the reporting period.

TABLE II - INCOME STATEMENT ACCOUNTS

1. On page 5, respondents shall enter in column (b), the dollar amount recorded in each of the accounts identified in column (a) for the reporting period.

2. On pages 6 and 7, respondents shall enter in column (ab) the ending account balances for the accounts identified in column (aa). In columns (ac) through (af) respondents shall enter the dollar amounts representative of the matrix required by 47 C.F.R. Section 32.5999(f) for salaries and wages, benefits, rents, and other expenses. Each matrix element amount reported for accounts 6112 through 6116 (excluding account 6115), and accounts 6512, 6534, and 6535 shall be reduced by amounts cleared from those accounts. These amounts shall be reported as specified in the row instructions. The net balance for these accounts shall also be reported as specified in the row instructions.

3. On page 8, respondents shall enter in column (bb) the dollar amount recorded in each of the accounts identified in column (ba) for the reporting period.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "US".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

   For example, the file name for the Confidential Version of the initial USOA Report data file to be submitted by Illinois Bell to cover the calendar year 1988, would be LBIL88US.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
US	USOA Report data file
.	decimal point
C	Confidential version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ___123, NOT 123___. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for row number fields, which will include a decimal point and one decimal place.

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Data Record Descriptions

The nine data record types are described below. See pages 5 through 18 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 32 Type B1 records, followed by 53 Type P1 records, followed by 53 Type B1 records, followed by 48 Type B1 records, followed by 91 Type X1 records, followed by 39 Type B1 records, followed by one or more Type C3 records, followed by zero or more Type F2 records, followed by zero or more Type E3 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, etc. See page 6 for record layout.
Record Type B1	Account Balance Data Record	171 Type B1 records per file. One Type B1 record for each of the 32 rows shown on Page 2 of the accompanying Report Definition. After the 53 Type P1 records (see below), include one Type B1 record for each of the 53 rows shown on Page 4 of the accompanying Report Definition. Then include one Type B1 record for each of the 48 rows shown on Page 5 of the accompanying Report Definition. After the 91 Type X1 records (see below), include one Type B1 record for each of the 39 rows shown on Page 8 of the accompanying Report Definition. Each record contains the ending balance or dollar amount recorded in that particular account. See page 7 for record layout.
Record Type P1	Period Activity Data Record	53 Type P1 records per file. One record for each of the 53 rows shown on Page 3 of the accompanying Report Definition. Each record contains the details of the activity of the account during the reporting period. See pages 8 & 9 for record layout.

Record Type X1	Expense Matrix Data Record	91 Type X1 records per file. One record for each of the 91 rows of expense data shown on Pages 6 & 7 of the accompanying Report Definition. Each record contains the dollar amounts for the expense matrix elements. See pages 10 & 11 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 12 & 13 for record layout.
Record Type F2	Footnote Record	Optional. Zero or more Type F2 records per file. Contains explanatory footnote text. See page 14 & 15 for record layout.
Record Type E3	Erratum Record	Zero Type E3 records in the first submission of a year's data. One or more Type E3 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 16 & 17 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 18 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88US.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19890315	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3         4         5          . . . . .   Ruler line
12345678901234567890123456789012345678901234567890123456789  . . . . .   Ruler line
Sample record:
1001,"LBIL","H1","LBIL88US.C01",1988,0,19890315,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-02"	18-35	Always contains "FCC REPORT 43-02" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	" "	70-91	Name of the study area. Usually blank, since this is an operating company level report. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Dec 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                  1         1
        1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
```

Sample record:

```
1002,"LBIL","L1","FCC REPORT 43-02","Illinois Bell                    ","                    ","Jan 1988 to Dec 1988","XQ"
```

RECORD TYPE B1 - ACCOUNT BALANCE DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"B1"	13-16	Always contains the letter B capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1130.0	18-23	Row number as identified on Pages 2, 4, 5 & 8 of the accompanying Report Definition. Valid ranges: 120.0 to 150.0, 340.0 to 490.0, 510.0 to 530.0, 790.0, 1120.0 to 1500.0, 3100.0 to 4550.0, 5001.0 to 5302.0, 7100.0 to 7990.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Account Balance data	5432	25-33	This field contains the ending balance or dollar amount recorded in the particular account. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	35-38	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type B1, P1, X1 and C3 records) containing footnote text to explain the occasioning facts.

```
         1         2         3
12345678901234567890123456789012345678
Sample records:
1003,"LBIL","B1",1130.0,      5432,"XQ"
1088,"LBIL","B1",3100.0,      5432,"XQ"
1141,"LBIL","B1",5001.0,      5432,"XQ"
1200,"LBIL","B1",7110.0,      5432,"XQ"
```

RECORD TYPE P1 - PERIOD ACTIVITY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1035	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"P1"	13-16	Always contains the letter P capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2001.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 210.0 to 260.0, 2001.0 to 2690.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
5	Column (ab) data	65432	25-33	This field contains the data corresponding to column (ab) as shown on Page 3 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (ac) data	2716	35-43	Column (ac) data Format: see Field 5 above.
7	Column (ad) data	5432	45-53	Column (ad) data Format: see Field 5 above.
8	Column (ae) data	2716	55-63	Column (ae) data Format: see Field 5 above.
9	Column (af) data	60000	65-73	Column (af) data Format: see Field 5 above.

RECORD TYPE P1 - PERIOD ACTIVITY DATA RECORD (continued)

Field	Item	Example	Position	Description
10	End of Record Code	"XQ"	75-78	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type P1, B1, X1 and C3 records) containing footnote text to explain the occasioning facts.

```
         1         2         3         4         5         6         7
1234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1035,"LBIL","P1",2001.0,    65432,    2716,    5432,    2716,    60000,"XQ"
1056,"LBIL","P1",2215.1,    15432,    2716,    5432,    2716,    10000,"XQ"
```

RECORD TYPE X1 - EXPENSE MATRIX DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1189	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"X1"	13-16	Always contains the letter X capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	6112.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 610.0 to 730.0, 6110.0 to 6790.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (ab) data	21728	25-33	This field contains the data corresponding to column (ab) as shown on Pages 6 & 7 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (ac) data	5432	35-43	Column (ac) data Format: see Field 5 above.
7	Column (ad) data	5432	45-53	Column (ad) data Format: see Field 5 above.
8	Column (ae) data	5432	55-63	Column (ae) data Format: see Field 5 above.
9	Column (af) data	5432	65-73	Column (af) data Format: see Field 5 above.

RECORD TYPE X1 - EXPENSE MATRIX DATA RECORD (continued)

Field	Item	Example	Position	Description
10	End of Record Code	"XQ"	75-78	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type X1, B1 and C3 records) containing footnote text to explain the occasioning facts.

```
         1         2         3         4         5         6         7
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample records:
1189,"LBIL","X1",6112.0,    21728,     5432,     5432,     5432,     5432,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1319	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1035	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for an entire column, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AB"	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 10. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"AC"	42-45	.....
9	Third Column Label	"AD"	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 11 thru 26 are not used in this record in this data file.
27	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1319,"LBIL","C3",1035,"I   ",2001.0,"AB","AC","AD","  ","  ","  ","  ","  ","  ","  ","  ","
1320,"LBIL","C3",1056,"I   ",2215.1,"AE","AF","  ","  ","  ","  ","  ","  ","  ","  ","  ","
1321,"LBIL","C3",9999,"I   ",9999.0,"BB","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","
1322,"LBIL","C3",1279,"II  "," 730.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","
1323,"LBIL","C3",1318,"II  "," 790.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","
```

```
   1         1         1         1         1
9  0         1         2         3         4
78901234567890123456789012345678901234567890
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F2 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1324	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F2"	13-16	Always contains the letter F capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1035	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. Left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AE"	37-40	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. Left justified and space filled.

RECORD TYPE F2 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-43	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	45-46	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text (spaces until pos. 104) *	48-104	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	106-109	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         10
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1324,"LBIL","F2",1035,"I   ",2001.0,"AE", 1, 1,"Footnote text for footnote 1                              ","XQ"
1325,"LBIL","F2",1035,"I   ",2001.0,"AE", 1, 2,"continuation text for footnote 1                          ","XQ"
1326,"LBIL","F2",1035,"I   ",2001.0,"AE", 1, 3,"last line of footnote 1                                   ","XQ"
1327,"LBIL","F2",1056,"I   ",2215.1,"ZZ", 2, 1,"Footnote 2 pertains to all cols. of Table I row 2215.1    ","XQ"
1328,"LBIL","F2",9999,"I   ",9999.0,"BB", 3, 1,"Footnote 3 pertains to all rows of Table I column BB      ","XQ"
1329,"LBIL","F2",1279,"II  ", 730.0,"AC", 4, 1,"Footnote 4 pertains to Table II row 730 column AC        ","XQ"
```

RECORD TYPE E3 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1330	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E3"	13-16	Always contains the letter E capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1035	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	2001.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If an entire column, an entire table, or the entire submission was corrected, enter 9999.0. Format: right justified and space filled, with one decimal place. For row numbers that are integers, append .0 to the row number. For row numbers with one decimal place (e.g., 2215.1), use the row number as shown.
7	Column Label	"AB"	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 10. Format: include quotation marks. left justified and space filled.

RECORD TYPE E3 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"AC"	42-45	.....
9	Third Column Label	"AD"	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 11 thru 26 are not used in this record in this data file.
27	Footnote Number	1	137-138	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	140-143	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1330,"LBIL","E3",1035,"I   ",2001.0,"AE","AF","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1331,"LBIL","E3",1042,"I   ", 210.0,"AE","AF","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1332,"LBIL","E3",1056,"I   ",2215.1,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1333,"LBIL","E3",9999,"I   ",9999.0,"BB","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1334,"LBIL","E3",1279,"II  ", 730.0,"AC","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
   1         1         1         1         1
9  0         1         2         3         4
7890123456789012345678901234567890123456789012345
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1335	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1335,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-02, the ARMIS USOA Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Page Layouts

The twenty-one page layouts are illustrated on pages 3 through 23. The paper report will consist of the following pages, in order:

	Illustrated on Page
Table I Page 1	3
Table I Pages 2.1 and 2.2	4 - 5
Table I Pages 3.1 and 3.2	6 - 7
Table I Page 4	8
Table I Page 5	9
Table II Page 1	10
Table II Page 2	11
Table II Pages 3.1 and 3.2	12 - 13
Table II Pages 4.1 and 4.2	14 - 15
Table II Pages 5.1 and 5.2	16 - 17
Table II Page 6	18
Table II Page 7	19
The Confidential Treatment Table (at least one page and as many pages as needed)	20
The Footnote Table (at least one page and as many pages as needed)	21
The Erratum Table (for submission number 2 or higher, as many pages as needed)	22
The Certification Page	23

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(a)	(b)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	Current Assets	
1130	Cash	
1140	Special cash deposits	
1150	Working cash advances	
1160	Temporary investments	
1120	Cash and equivalents	
1180	Telecommunications accounts receivable	
1181	Accounts receivable allowance-telecommunications	
1190	Other accounts receivable	
1191	Accounts receivable allowance-other	
1200	Notes receivable	
1201	Notes receivable allowance	
1210	Interest and dividends receivable	
1220	Inventories	
120	Total Noncash current (excluding prepayments)	
1290	Prepaid rents	
1300	Prepaid taxes	
1310	Prepaid insurance	
1320	Prepaid directory expenses	
1330	Other prepayments	
1280	Prepayments	
1350	Other Current Assets	
130	Total Current Assets	
	Noncurrent Assets	
1401	Investments in affiliated companies	
1402	Investments in nonaffiliated companies	
1406	Nonregulated investments	
1407	Unamortized debt issuance expense	
1408	Sinking funds	
1410	Other noncurrent assets	
1438	Deferred maintenance and retirements	
1439	Deferred charges	
1500	Other jurisdictional assets-net	
150	Total Noncurrent Assets	

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 2.1 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Beginning Balance	Additions	Retirements
	(aa)	(ab)	(ac)	(ad)
1234.1	xxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Plant			
2001	TPIS			
2002	PHFTU			
2003	TPUC-short term			
2004	TPUC-long term			
2005	Telecom plant adjstmnt			
2006	Nonoperating plant			
2007	Goodwill			
210	Total Plant			
	TPIS - General Support			
2111	Land			
2112	Motor vehicles			
2113	Aircraft			
2114	Special purpose vehic			
2115	Garage work equipment			
2116	Other work equipment			
2121	Buildings			
2122	Furniture			
2123	Office Equipment			
2124	Gen purpose computers			
2110	Land & Support			
	TPIS - Central Office			
2211	Analog elec switch			
2212	Digit elec switch			
2215.1	Step-by-step switching			
2215.2	Crossbar switching			
2215.3	Other elec-mechan sw			
2215	Electro-mechan sw			
2210	Cen Office-Sw			
2220	Operator sys			

... Ruler Line

If applicable:
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
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TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Transfers/ Adjustments	Ending Balance	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Plant			
2001	TPIS			
2002	PHFTU			
2003	TPUC-short term			
2004	TPUC-long term			
2005	Telecom plant adjstmnt			
2006	Nonoperating plant			
2007	Goodwill			
210	Total Plant			
	TPIS - General Support			
2111	Land			
2112	Motor vehicles			
2113	Aircraft			
2114	Special purpose vehic			
2115	Garage work equipment			
2116	Other work equipment			
2121	Buildings			
2122	Furniture			
2123	Office Equipment			
2124	Gen purpose computers			
2110	Land & Support			
	TPIS - Central Office			
2211	Analog elec switch			
2212	Digit elec switch			
2215.1	Step-by-step switching			
2215.2	Crossbar switching			
2215.3	Other elec-mechan sw			
2215	Electro-mechan sw			
2210	Cen Office-Sw			
2220	Operator sys			

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TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Beginning Balance	Additions	Retirements	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
2231.1	Satellite & earth sta				
2231.2	Other radio facilities				
2231	Radio systems				
2232	Circuit equipment				
2230	Transmission				
	TPIS - IOT				
2311	Station apparatus				
2321	Customer premise wire				
2341	Large PBX				
2351	Publ tel trmnal equip				
2362	Other terminal equip				
2310	IOT				
	TPIS - Cable & Wire				
2411	Poles				
2421	Aerial cable				
2422	Underground cable				
2423	Buried cable				
2424	Submarine cable				
2425	Deep sea cable				
2426	Intrabldg network cble				
2431	Aerial wire				
2441	Conduit systems				
2410	Cable & Wire				
	TPIS - Amortiz Assets				
2681	Capital Leases				
2682	Leasehold improvements				
2680	Amort Tangible				
2690	Intangibles				
260	Total TPIS				

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TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Transfers/ Adjustments	Ending Balance	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
2231.1	Satellite & earth sta			
2231.2	Other radio facilities			
2231	Radio systems			
2232	Circuit equipment			
2230	Transmission			
	TPIS - IOT			
2311	Station apparatus			
2321	Customer premise wire			
2341	Large PBX			
2351	Publ tel trmnal equip			
2362	Other terminal equip			
2310	IOT			
	TPIS - Cable & Wire			
2411	Poles			
2421	Aerial cable			
2422	Underground cable			
2423	Buried cable			
2424	Submarine cable			
2425	Deep sea cable			
2426	Intrabldg network cble			
2431	Aerial wire			
2441	Conduit systems			
2410	Cable & Wire			
	TPIS - Amortiz Assets			
2681	Capital Leases			
2682	Leasehold improvements			
2680	Amort Tangible			
2690	Intangibles			
260	Total TPIS			

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xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE 4 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(ba)	(bb)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	Depreciation and Amortization	
3100	Accumulated depreciation	
3200	Accumulated depreciation - PHFTU	
3300	Accumulated depreciation - Nonoperating	
3410	Accumulated amortization - Capitalized leases	
3420	Accumulated amortization - Leasehold improvements	
3400	Accumulated amortization - Tangible	
3500	Accumulated amortization - Intangible	
3600	Accumulated amortization - Other	
340	Total Depreciation and Amortization	
350	Net Plant	
360	Total Assets	
	Current Liabilities	
4010	Accounts Payable	
4020	Notes payable	
4030	Advanced billing and payments	
4040	Customer's deposits	
4050	Current maturities - long-term debt	
4060	Current maturities - capital leases	
4070	Income taxes - accrued	
4080	Other taxes - accrued	
4100	Net current deferred operating income taxes	
4110	Net current deferred nonoperating income taxes	
4120	Other accrued liabilities	
4130	Other current liabilities	
410	Total Current Liabilities	

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COSA: xxxx PAGE 5 OF 5

TABLE I - BALANCE SHEET ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(ba)	(bb)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	Long-Term Debt	
4210	Funded debt	
4220	Premium on long-term debt	
4230	Discount on long-term debt	
4240	Reacquired debt	
4250	Obligations under capital leases	
4260	Advances from affiliated companies	
4270	Other long-term debt	
420	Total Long-Term Debt	
	Other Liabilities and Deferred Credits	
4310	Other long-term liabilities	
4320	Unamortized operating investment tax credits - net	
4330	Unamortized nonoperating investment tax crs - net	
4340	Net noncurrent deferred operating income taxes	
4350	Net noncurrent deferred nonoperating income taxes	
4360	Other deferred credits	
4370	Other jurisdictional liabilities/deferred crs - net	
430	Total Other Liabilities and Deferred Credits	
	Stockholders' Equity	
4510	Capital stock	
4520	Additional paid-in capital	
4530	Treasury stock	
4540	Other Capital	
4550	Retained earnings	
440	Total Stockholders' Equity	
450	Total Liabilities & Stockholders' Equity	
460	Retained Earnings (Beginning of Year)	
465	Net Income	
470	Dividends Declared	
475	Miscellaneous Debits	
480	Miscellaneous Credits	
490	Retained Earnings (End of Year)	

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(a)	(b)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	REVENUE ACCOUNTS	
	Local Network Service Revenues	
5001	Basic area revenue	
5002	Optional extended area revenue	
5003	Cellular mobile service revenue	
5004	Other mobile service revenue	
510	Basic local service rev (Class A Account 5000)	
5010	Public telephone revenue	
5040	Local private line revenue	
5050	Customer premises revenue	
5060	Other local exchange revenue	
5069	Other local exchange revenue settlements	
520	Basic local service revenue	
	Network Access Services Revenues	
5081	End user revenue	
5082	Switched access revenue	
5083	Special access revenue	
5084	State access revenue	
5080	Network access revenue	
	Long Distance (LD) Network Services Revenues	
5100	LD message revenue (Class A)	
5111	LD inward-only revenue	
5112	LD outward-only revenue	
5110	Unidirectional LD Revenue	

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(a)	(b)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
5121	Subvoice grade LD private network revenue	
5122	Voice grade LD private network revenue	
5123	Audio program grade LD private network revenue	
5124	Video program grade LD private network revenue	
5125	Digital transmission LD private network revenue	
5126	LD private network switching revenue	
5128	Other LD private network revenue	
5129	Other LD private network revenue settlements	
5120	Long distance private network revenue	
5160	Other long distance revenue	
5169	Other long distance revenue settlements	
525	LD Network Service Revenues	
	Miscellaneous Revenues	
5230	Directory revenue	
5240	Rent revenue	
5250	Corporate operations revenue	
5261	Special billing arrangements revenue	
5262	Customer operations revenue	
5263	Plant operations revenue	
5264	Other incidental regulated revenue	
5269	Other revenue settlements	
5260	Miscellaneous revenues (Class A)	
5270	Carrier billing and collection revenue	
5280	Nonregulated revenue	
5200	Miscellaneous revenues	
	Uncollectible Revenues	
5301	Uncollectible revenue-telecommunications	
5302	Uncollectible revenue-other	
5300	Uncollectible revenue	
530	Total Operating Revenues	

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 3.1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	EXPENSE ACCOUNTS				
	Plant Specific Ops				
6112	Motor vehicle				
610	Clearance - MV				
615	Net Balance - MV				
6113	Aircraft				
620	Clearance - Aircr				
625	Net Balance - Aircr				
6114	Special purpose vehicle				
630	Clearance - SPV				
635	Net Balance - SPV				
6115	Garage work equipment				
6116	Other work equipment				
640	Clearance - OWE				
645	Net Balance - OWE				
6110	Network support				
6121	Land & building				
6122	Furniture & artworks				
6123	Office equipment				
6124	Gen purpose computers				
6120	General support				
6211	Analog electronic				
6212	Digital electronic				
6215	Electro-mechanical				
6210	Cntrl Office Sw				
6220	Operator systems				
6231	Radio systems				
6232	Circuit equipment				
6230	Cntrl office Tr				
6311	Station apparatus				
6341	Large PBX				
6351	Public tel tmnl equip				
6362	Other terminal equip				
6310	IOT expense				

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 3.2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Rents	Other Expenses	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	EXPENSE ACCOUNTS			
	Plant Specific Ops			
6112	Motor vehicle			
610	Clearance - MV			
615	Net Balance - MV			
6113	Aircraft			
620	Clearance - Aircr			
625	Net Balance - Aircr			
6114	Special purpose vehicle			
630	Clearance - SPV			
635	Net Balance - SPV			
6115	Garage work equipment			
6116	Other work equipment			
640	Clearance - OWE			
645	Net Balance - OWE			
6110	Network support			
6121	Land & building			
6122	Furniture & artworks			
6123	Office equipment			
6124	Gen purpose computers			
6120	General support			
6211	Analog electronic			
6212	Digital electronic			
6215	Electro-mechanical			
6210	Cntrl Office Sw			
6220	Operator systems			
6231	Radio systems			
6232	Circuit equipment			
6230	Cntrl office Tr			
6311	Station apparatus			
6341	Large PBX			
6351	Public tel tmnl equip			
6362	Other terminal equip			
6310	IOT expense			

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STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 4.1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
6411	Poles				
6421	Aerial cable				
6422	Underground cable				
6423	Buried cable				
6424	Submarine cable				
6425	Deep sea cable				
6426	Intrabldg network cable				
6431	Aerial wire				
6441	Conduit Systems				
6410	Cable & Wire				
650	Total Plant Spc				
	Plant Nonspecific Ops				
6511	PHFTU				
6512	Provisioning				
660	Clearance - Prov				
665	Net Balance - Prov				
6510	Other PP&E Exp				
6531	Power				
6532	Network administration				
6533	Testing				
6534	Plant ops admin				
670	Clearance - POA				
675	Net Balance - POA				
6535	Engineering				
680	Clearance - Eng				
685	Net Balance - Eng				
6530	Network Ops				
6540	Access				
6561	Depreciation-TPIS		N/A	N/A	
6562	Depreciation-PHFTU		N/A	N/A	
6563	Amortization-tangible		N/A	N/A	
6564	Amortization-intangible		N/A	N/A	
6565	Amortization-other		N/A	N/A	
6560	Dep & Amort Exp		N/A	N/A	
690	Total Plant Non				

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 4.2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Rents	Other Expenses	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
6411	Poles			
6421	Aerial cable			
6422	Underground cable			
6423	Buried cable			
6424	Submarine cable			
6425	Deep sea cable			
6426	Intrabldg network cable			
6431	Aerial wire			
6441	Conduit Systems			
6410	Cable & Wire			
650	Total Plant Spc			
	Plant Nonspecific Ops			
6511	PHFTU	N/A		
6512	Provisioning	N/A		
660	Clearance - Prov	N/A		
665	Net Balance - Prov	N/A		
6510	Other PP&E Exp	N/A		
6531	Power	N/A		
6532	Network administration	N/A		
6533	Testing	N/A		
6534	Plant ops admin	N/A		
670	Clearance - POA	N/A		
675	Net Balance - POA	N/A		
6535	Engineering	N/A		
680	Clearance - Eng	N/A		
685	Net Balance - Eng	N/A		
6530	Network Ops	N/A		
6540	Access	N/A		
6561	Depreciation-TPIS	N/A		
6562	Depreciation-PHFTU	N/A		
6563	Amortization-tangible	N/A		
6564	Amortization-intangible	N/A		
6565	Amortization-other	N/A		
6560	Dep & Amort Exp	N/A		
690	Total Plant Non	N/A		

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 5.1 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Total	Salaries and Wages	Benefits	
	(aa)	(ab)	(ac)	(ad)	
1234.1	xxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Customer Operations				
6611	Product management				
6612	Sales				
6613	Product Advertising				
6610	Marketing Expense				
6621	Call Completion				
6622	Number Services				
6623	Customer Services				
6620	Services Expense				
700	Total Cust Ops				
	Corporate Operations				
6711	Executive				
6712	Planning				
6710	Exec & Planning				
6721	Accounting & finance				
6722	External relations				
6723	Human resources				
6724	Information management				
6725	Legal				
6726	Procurement				
6727	Research & development				
6728	Other general & admin				
6720	General & Admin				
6790	Provis uncollect notes		N/A	N/A	
710	Total Corp Ops				
720	Total Ops Exp				
730	Net Ops Rev				

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 5.2 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Rents	Other Expenses	
	(aa)	(ae)	(af)	
1234.1	xxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Customer Operations			
6611	Product management	N/A		
6612	Sales	N/A		
6613	Product Advertising	N/A		
6610	Marketing Expense	N/A		
6621	Call Completion	N/A		
6622	Number Services	N/A		
6623	Customer Services	N/A		
6620	Services Expense	N/A		
700	Total Cust Ops	N/A		
	Corporate Operations			
6711	Executive	N/A		
6712	Planning	N/A		
6710	Exec & Planning	N/A		
6721	Accounting & finance	N/A		
6722	External relations	N/A		
6723	Human resources	N/A		
6724	Information management	N/A		
6725	Legal	N/A		
6726	Procurement	N/A		
6727	Research & development	N/A		
6728	Other general & admin	N/A		
6720	General & Admin	N/A		
6790	Provis uncollect notes	N/A		
710	Total Corp Ops	N/A		
720	Total Ops Exp			
730	Net Ops Rev			

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PERIOD: From mmm yyyy To mmm yyyy TABLE II
COSA: xxxx PAGE 6 OF 7

TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(ba)	(bb)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	Other Operating Income and Expense	
7110	Income from custom work	
7130	Return from nonreg use of regulated facilities	
7140	Gains/losses from foreign exchange	
7150	Gains/losses from disposition of land & artworks	
7160	Other operating gains and losses	
7100	Other operating income and expenses	
	Operating Taxes	
7210	Operating investment tax credits-net	
7220	Operating federal income taxes	
7230	Operating state and local income taxes	
7240	Operating other taxes	
7250	Provision for deferred operating income tax-net	
7200	Operating Taxes	
	Nonoperating Income and Expense	
7310	Dividend income	
7320	Interest income	
7330	Income from sinking and other funds	
7340	Allowance for funds used during construction(AFUDC)	
7350	Gains/losses from the disposition of property	
7360	Other nonoperating income	
7370	Special charges	
7300	Nonoperating Income and Expense	
	Nonoperating Taxes	
7410	Nonoperating investment tax credits-net	
7420	Nonoperating federal income taxes	
7430	Nonoperating state and local income taxes	
7440	Nonoperating other taxes	
7450	Provision for deferred nonoperating income tax-net	
7400	Nonoperating Taxes	

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COSA: xxxx

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SUBMISSION x
TABLE II
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TABLE II - INCOME STATEMENT ACCOUNTS
(Dollars in thousands)

Row/Account Number	Account Title	Amount
	(ba)	(bb)
1234.1	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789 ... Ruler Line
	Interest and Related Items	
7510	Interest on funded debt	
7520	Interest expense-capital leases	
7530	Amortization of debt issuance expense	
7540	Other interest deductions	
7500	Interest and Related Items	
	Extraordinary Items	
7610	Extraordinary income credits	
7620	Extraordinary income charges	
7630	Current inc tax effect of extraordinary items-net	
7640	Provision for deferred inc tax effect of items-net	
7600	Extraordinary Items	
	Jurisdictional Differences & Nonregulated Income	
7910	Income effects of jurisdictional differences-net	
7990	Nonregulated net income	
790	Net Income	

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x ... Ruler Line

sample entries:

I	2001	AB,AC,AD
I	2215.1	AE,AF
I	ALL	BB
II	730	ALL
II	790	ALL

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA
IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA
IN THIS REPORT.

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
FOOTNOTE TABLE
PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234.1	xxx	12	xxxxxxxxxxxxxxxxxxxx

FCC REPORT 43-02
ARMIS USOA REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy ERRATUM TABLE
COSA: xxxx PAGE 1 OF x

ERRATUM TABLE

Table (a)	Row (b)	Column(s) (c)	FN# (d)	
xxxx	1234.1	xx,xx,xx,xx, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line

sample entries:

I	2001	AE,AF	1	
I	210	AE,AF		
I	2215.1	ALL	2	
I	ALL	BB	3	—
II	730	AC	4	

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

APPENDIX

This document provides the instructions for FCC Report 43-03, the ARMIS Joint Cost Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-03, the ARMIS Joint Cost Report, to the Commission.

B. General Information

1. FCC Report 43-03 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues in excess of $100 million.

2. Affected carriers carrier shall file by April 1 of each year the report for the previous calendar year. The inital report will be filed by April 1, 1989 and will contain data for the calendar year 1988.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-03, which identifies the filing as the ARMIS Joint Cost Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's

data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. Data Items That Are "Not Available" or Are "Withheld"

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. Where to File

1. Carriers submitting FCC Report 43-03 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the occasioning facts.

2. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-03. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-03 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 46 of the attached Paper Report Specifications.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-03, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-03 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-03 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Approved by OMB
3060-0395
Expires 10/31/90
Estimated Average Burden Hours Per Response: 115 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-03, the ARMIS Joint Cost Report, and lists the annual revenue requirement and joint cost data which must be provided annually for each study area. It contains the following:

	Pages
Row and Column Descriptions	2 - 5
Table I - Regulated/Nonregulated Data	6 - 15
Certification	16

All amounts must be rounded to the nearest thousand dollars. Unless otherwise indicated, account balances must reflect the results of operations as of the end of the reporting period (December 31, 19xx).

Items which need not be reported because they do not apply are designated by N/A. All other fields must be populated. If there are no data applicable to a given field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

NOTICE: The ARMIS Joint Cost Report collects the study area level data for regulated and nonregulated operations for those accounts which are related to a carrier's revenue requirement. The ARMIS Joint Cost Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, joint cost allocations, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 115 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington DC 20503.

ROW INSTRUCTIONS

Every row item is not described below. Those rows omitted from the following instructions are Part 32 accounts and the amounts entered for these accounts should be reported pursuant to our Part 32 Rules. The following descriptions apply to those rows that are summarizations or need further clarification. Four digit row numbers indicate that there is a Part 32 account bearing the same number and title. Unless otherwise indicated, three digit row numbers indicate that there is no comparable Part 32 account.

Row	Description
510.	Basic Local Service Revenue (Class A Account 5000) - For Class A companies this amount is the total of Row/Account 5001 through 5004 (the balance of account 5000 for Class A companies).
520.	Basic Local Service Revenue (Class B) - For Class A companies, this amount is the total of Row/Account 510, 5010, 5040, 5050, 5060, and 5069. For Class B companies, this amount is the balance of account 5000.
5080.	Network Access Revenue - This amount is the total of rows 5081 through 5084.
5100.	Long Distance Message Revenue (Class A companies only) - Class A companies should enter the balance of the Class A level account 5100.
5110.	Unidirectional Long Distance Revenue - This amount is the total of rows 5111 and 5112.
5120.	Long Distance Private Network Revenue - This amount is the total of rows 5121 through 5129.
525.	Long Distance Network Services Revenue - Row 525 should be populated by both Class A and Class B companies. For Class A companies, this amount is the total of Row/Account 5100, 5110, 5120, 5160 and 5169. For Class B companies, this amount is the balance of account 5100.
5260.	Miscellaneous Revenue (Class A) - This amount is the total of rows 5261 through 5269.
5200.	Miscellaneous Revenue - This amount is the total of rows 5260, 5270 and 5280.
5300.	Uncollectible Revenue - This amount is the total of rows 5301 and 5302.
530.	Net Revenues - This amount is the total of rows 5000, 5080, 5100, and 5200 less row 5300.
6110.	Network Support Expense - This amount is the total of rows 6112 through 6116.
6120.	General Support Expenses - This amount is the total of rows 6121 through 6124.
6210.	Central Office Switching Expense - This amount is the total of rows 6211 through 6215.

6230. Central Office Transmission Expense - This amount is the total of rows 6231 and 6232.

6310. Information Origination/Termination - This amount is the total of rows 6311 through 6362.

6410. Cable and Wire Facilities Expense - This amount is the total of rows 6411 through 6441.

6510. Other Property Plant and Equipment Expenses - This amount is the total of rows 6511 and 6512.

6530. Network Operations Expenses - This amount is the total of rows 6531 through 6535.

6560. Depreciation and Amortization Expenses - This amount is the total of rows 6561 through 6565.

6610. Marketing - This amount is the total of rows 6611 through 6613.

6620. Services - This amount is the total of rows 6621 through 6623.

6710. Executive and Planning - This amount is the total of rows 6711 and 6712.

6720. General and Administrative - This amount is the total of rows 6721 through 6728.

7100. Other Operating Income and Expense - This amount is the total of rows 7110 through 7160.

7200. Operating Taxes - This amount is the total of rows 7210 through 7250.

7300. Nonoperating Income and Expense - This amount is the total of rows 7310 through 7370.

7500. Interest and Related Items - This amount is the total of rows 7510 through 7540.

7600. Extraordinary Items - This amount is the total of rows 7610 through 7640.

750. Total Expenses - This amount is the total of rows 6110, 6120, 6210, 6220, 6230, 6310, 6410, 6510, 6530, 6540, 6560, 6610, 6620, 6710, 6720, and 6790, plus or minus 7100, plus 7200, plus or minus 7300, plus 7500, plus or minus 7600, 7910, and 7990.

2110. Land and Support Assets - This amount equals the total of rows 2111 through 2124.

2210. Central Office - Switching - This amount equals the total of rows 2211 through 2215.

2230. Central Office - Transmission - This amount equals the total of rows 2231 and 2232.

2310. Information Origination/Termination - This amount equals the total of rows 2311 through 2362.

2410. Cable and Wire Facilities - This amount equals the total of rows 2411 through 2441.

2680. Amortizable Tangible Assets - This amount equals the total of rows 2681 and 2682.

2001. Telecommunications Plant In Service - This amount equals the total of rows 2110, 2210, 2220, 2230, 2310, 2410, 2680 and 2690.

230. Interstate Cash Working Capital - This amount equals that portion of investment required to meet current expenses. This amount shall be calculated in accordance with Part 65 of the Commission's Rules.

370. Total Investment - This amount equals the total of rows 2001, 2002, 2003, 2004, 2005, 1220, 1438, 1439, 1500 and 230.

3400. Accumulated Amortization - Tangible - This amount equals the total of rows 3410 and 3420.

495. Total Reserve - This amount equals the total of rows 3100, 3200, 3400, 3500, 3600, 4100, 4340, 4040, 4120, 4360 and 4370.

NOTE 1: Class B companies should enter Class B Account balances in the appropriate rows and "N/A" in all columns of the Class A level rows. Unless otherwise indicated, Class A companies must enter data in every row, including the Class B level accounts, to be consistent with the requirements of Part 36.

NOTE 2: The balance of account 7991 must be entered in row 5280.

COLUMN INSTRUCTIONS

Column	Description
(b)	Total - This amount reflects the operating result for each of the accounts itemized in this report, and includes all regulated and nonregulated company operations for each row. These amounts are represented prior to separation between state and interstate jurisdictions.
(c)	Directly Assigned-Regulated - This amount reflects that portion of each itemized account that is dedicated solely to regulated operations.
(d)	Directly Assigned-Nonregulated - This amount reflects that portion of each itemized account that is dedicated solely to nonregulated operations.
(e)	Attributed-Regulated - This amount reflects that portion of each itemized account that is allocated to regulated activities based on a direct or indirect measure of cost causation.
(f)	Attributed-Nonregulated - This amount reflects that portion of each itemized account that is allocated to nonregulated activities based on a direct or indirect measure of cost causation.
(g)	Generally Allocated-Regulated - This amount reflects that portion of each itemized account that is allocated to regulated activities based on the general allocator as described in Part 64.
(h)	Generally Allocated-Nonregulated - This amount reflects that portion of each itemized account that is allocated to nonregulated activities based on the general allocator as described in Part 64.
(i)	Total Regulated - This amount equals the total of columns (c), (e) and (g).
(j)	Total Nonregulated - This amount equals the total of columns (d), (f) and (h).
(k)	SNFA and Intra-company Adjustments - This amount reflects adjustments made to each account for costs related to shared network facility arrangements and intra-company subsidiary contracts.
(l)	Other Adjustments - This amount reflects all remaining adjustments, such as prior period adjustments, necessary to arrive at the amount subject to separations.
(m)	Subject to Separations - This amount reflects that portion of each account which must be allocated between state and interstate jurisdictions (column (i) less columns (k) and (l)).

NOTE: All data must be reported as booked with the exception of the data in columns (k), (l), and (m) which will be reported as adjusted.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From xxx yyyy To xxx yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	REVENUES							
	Local Network Svcs							
5001	Basic area revenue			N/A	N/A	N/A	N/A	N/A
5002	Optional ext area			N/A	N/A	N/A	N/A	N/A
5003	Cellular mobile			N/A	N/A	N/A	N/A	N/A
5004	Other mobile servic			N/A	N/A	N/A	N/A	N/A
510	Ba loc svc(A 5000)			N/A	N/A	N/A	N/A	N/A
5010	Public telephone			N/A	N/A	N/A	N/A	N/A
5040	Local private line			N/A	N/A	N/A	N/A	N/A
5050	Customer premises			N/A	N/A	N/A	N/A	N/A
5060	Other local exchang			N/A	N/A	N/A	N/A	N/A
5069	Other local settlgs			N/A	N/A	N/A	N/A	N/A
520	Ba loc svc			N/A	N/A	N/A	N/A	N/A
	Network Access Svcs							
5081	End user			N/A	N/A	N/A	N/A	N/A
5082	Switched access			N/A	N/A	N/A	N/A	N/A
5083	Special access			N/A	N/A	N/A	N/A	N/A
5084	State access			N/A	N/A	N/A	N/A	N/A
5080	Network access			N/A	N/A	N/A	N/A	N/A
	Toll Network Svcs							
5100	LD msg rev(Class A)			N/A	N/A	N/A	N/A	N/A
5111	LD Inward-only			N/A	N/A	N/A	N/A	N/A
5112	LD Outward-only			N/A	N/A	N/A	N/A	N/A
5110	Unidirectional LD			N/A	N/A	N/A	N/A	N/A
5121	Subvce LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5122	Vce LD pvt network			N/A	N/A	N/A	N/A	N/A
5123	Audio LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5124	Vidio LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5125	Digital LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5126	LD pvt ntwk switch			N/A	N/A	N/A	N/A	N/A
5128	Other LD pvt ntwk			N/A	N/A	N/A	N/A	N/A
5129	Other LD pvt settle			N/A	N/A	N/A	N/A	N/A
5120	LD private network			N/A	N/A	N/A	N/A	N/A
5160	Other LD			N/A	N/A	N/A	N/A	N/A
5169	Other LD settlement			N/A	N/A	N/A	N/A	N/A
525	LD ntwk svcs rev			N/A	N/A	N/A	N/A	N/A
	Miscellaneous							
5230	Directory			N/A	N/A	N/A	N/A	N/A
5240	Rent			N/A	N/A	N/A	N/A	N/A
5250	Corporate operation			N/A	N/A	N/A	N/A	N/A
5261	Special billing arr			N/A	N/A	N/A	N/A	N/A
5262	Customer operations			N/A	N/A	N/A	N/A	N/A
5263	Plant operations			N/A	N/A	N/A	N/A	N/A
5264	Other incident reg			N/A	N/A	N/A	N/A	N/A
5269	Other settlements			N/A	N/A	N/A	N/A	N/A
5260	Misc. (Class A)			N/A	N/A	N/A	N/A	N/A
5270	Carrier bill & coll			N/A	N/A	N/A	N/A	N/A
5280	Nonregulated		N/A		N/A	N/A	N/A	N/A
5200	Miscellaneous							
	Uncollectible revs							
5301	Uncollect-telecomm							
5302	Uncollect-other							
5300	Uncollectible rev							
530	Net Revenues							

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From xxx yyyy To xxx yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	REVENUES					
	Local Network Svcs					
5001	Basic area revenue		N/A		N/A	N/A
5002	Optional ext area		N/A		N/A	N/A
5003	Cellular mobile		N/A		N/A	N/A
5004	Other mobile servic		N/A		N/A	N/A
510	Ba loc svc (A 5000)		N/A		N/A	N/A
5010	Public telephone		N/A		N/A	N/A
5040	Local private line		N/A		N/A	N/A
5050	Customer premises		N/A		N/A	N/A
5060	Other local exchang		N/A		N/A	N/A
5069	Other local settles		N/A		N/A	N/A
520	Ba loc svc		N/A			
	Network Access Svcs					
5081	End user		N/A			
5082	Switched access		N/A			
5083	Special access		N/A			
5084	State access		N/A			
5080	Network access		N/A			
	Toll Network Svcs					
5100	LD msg rev(Class A)		N/A		N/A	N/A
5111	LD Inward-only		N/A		N/A	N/A
5112	LD Outward-only		N/A		N/A	N/A
5110	Unidirectional LD		N/A		N/A	N/A
5121	Subvce LD pvt ntwk		N/A		N/A	N/A
5122	Vce LD pvt network		N/A		N/A	N/A
5123	Audio LD pvt ntwk		N/A		N/A	N/A
5124	Vidio LD pvt ntwk		N/A		N/A	N/A
5125	Digital LD pvt ntwk		N/A		N/A	N/A
5126	LD pvt ntwk switch		N/A		N/A	N/A
5128	Other LD pvt ntwk		N/A		N/A	N/A
5129	Other LD pvt settle		N/A		N/A	N/A
5120	LD private network		N/A		N/A	N/A
5160	Other LD		N/A		N/A	N/A
5169	Other LD settlement		N/A		N/A	N/A
525	LD ntwk svcs rev		N/A			
	Miscellaneous					
5230	Directory		N/A		N/A	N/A
5240	Rent		N/A		N/A	N/A
5250	Corporate operation		N/A		N/A	N/A
5261	Special billing arr		N/A		N/A	N/A
5262	Customer operations		N/A		N/A	N/A
5263	Plant operations		N/A		N/A	N/A
5264	Other incident reg		N/A		N/A	N/A
5269	Other settlements		N/A		N/A	N/A
5260	Misc. (Class A)		N/A		N/A	N/A
5270	Carrier bill & coll		N/A		N/A	N/A
5280	Nonregulated	N/A		N/A	N/A	N/A
5200	Miscellaneous					
	Uncollectible revs					
5301	Uncollect-telecomm				N/A	N/A
5302	Uncollect-other				N/A	N/A
5300	Uncollectible rev					
530	Net Revenues					

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	EXPENSES							
	Plant Specific							
6112	Motor vehicle							
6113	Aircraft							
6114	Special purpose veh							
6115	Garage work equip							
6116	Other work equip							
6110	Network support							
6121	Land & building							
6122	Furniture & artwork							
6123	Office equipment							
6124	Gen purpose comput							
6120	General support							
6211	Analog electronic							
6212	Digital electronic							
6215	Electro-mechanical							
6210	Central office-swit							
6220	Operator systems							
	Central office tran							
6231	Radio systems							
6232	Circuit equipment							
6230	Central office tran							
6311	Station apparatus							
6341	Large PBX							
6351	Public tel tmnl equ							
6362	Other terminal equi							
6310	Information O/T							
6411	Poles							
6421	Aerial cable							
6422	Underground cable							
6423	Buried cable							
6424	Submarine cable							
6425	Deep sea cable							
6426	Intrabldg ntwk cabl							
6431	Aerial wire							
6441	Conduit systems							
6410	Cable & wire							
	Plant Non-Specific							
6511	PMFTU							
6512	Provisioning							
6510	Other PP&E expense							
6531	Power							
6532	Network administrat							
6533	Testing							
6534	Plant ops administr							
6535	Engineering							
6530	Network operations							
6540	Access							
	Depreciate/Amortize							
6561	Depreciation-TPIS							
6562	Depreciation-PMFTU							
6563	Amortization-tangib							
6564	Amortization-intang							
6565	Amortization-other							
6560	Depreciate/Amortize							

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ARMIS JOINT COST REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From xxx yyyy To xxx yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (1)	Total Nonreg. (1)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	EXPENSES					
	Plant Specific					
6112	Motor vehicle				N/A	N/A
6113	Aircraft				N/A	N/A
6114	Special purpose veh				N/A	N/A
6115	Garage work equip				N/A	N/A
6116	Other work equip				N/A	N/A
6110	Network support					
6121	Land & building				N/A	N/A
6122	Furniture & artwork				N/A	N/A
6123	Office equipment				N/A	N/A
6124	Gen purpose comput				N/A	N/A
6120	General support					
6211	Analog electronic				N/A	N/A
6212	Digital electronic				N/A	N/A
6215	Electro-mechanical				N/A	N/A
6210	Central office-swit					
6220	Operator systems					
	Central Office Tran					
6231	Radio systems				N/A	N/A
6232	Circuit equipment				N/A	N/A
6230	Central office tran					
6311	Station apparatus				N/A	N/A
6341	Large PBX				N/A	N/A
6351	Public tel trnl equ				N/A	N/A
6362	Other terminal equi				N/A	N/A
6310	Information O/T					
6411	Poles				N/A	N/A
6421	Aerial cable				N/A	N/A
6422	Undgerground cable				N/A	N/A
6423	Buried cable				N/A	N/A
6424	Submarine cable				N/A	N/A
6425	Deep sea cable				N/A	N/A
6426	Intrabldg ntwk cabl				N/A	N/A
6431	Aerial wire				N/A	N/A
6441	Conduit systems				N/A	N/A
6410	Cable & wire					
	Plant Non-Specific					
6511	PMFTU				N/A	N/A
6512	Provisioning				N/A	N/A
6510	Other PP&E expense					
6531	Power				N/A	N/A
6532	Network administrat				N/A	N/A
6533	Testing				N/A	N/A
6534	Plant ops administr				N/A	N/A
6535	Engineering				N/A	N/A
6530	Network operations					
6540	Access					
	Depreciate/Amortize					
6561	Depreciation-TPIS				N/A	N/A
6562	Depreciation-PMFTU				N/A	N/A
6563	Amortization-tangib				N/A	N/A
6564	Amortization-intang				N/A	N/A
6565	Amortization-other				N/A	N/A
6560	Depreciate/Amortize					

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3060-0395
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Customer Ops-Mkting							
6611	Product management							
6612	Sales							
6613	Product advertising							
6610	Marketing expense							
	Customer Ops-Servic							
6621	Call completion							—
6622	Number services							
6623	Customer services							
6620	Services expense							
	Corporate Operation							
6711	Executive							
6712	Planning							
6710	Executive & plannin							
6721	Accounting & financ							
6722	External relations							
6723	Human resources							
6724	Information Managmt							
6725	Legal							
6726	Procurement							
6727	Research & develop							
6728	Other general & adm							
6720	General & administr							
6790	Prov uncollect note							
	Other Ops Inc/Expen							
7110	Income custom work							—
7130	Return nonreg use							
7140	Gain/loss foreign							
7150	Gain/loss land/art							
7160	Other ops gain/loss							
7100	Other ops inc/expen							
	Operating Taxes							
7210	Ops inv tax cr-net							
7220	Ops federal inc tax							
7230	Ops state & local							
7240	Ops other taxes							
7250	Prov defer inc tax							
7200	Operating taxes							
	Nonops income/expen							
7310	Dividend income							
7320	Interest income							
7330	Inc sinking/other							
7340	AFUDC							
7350	Gain/loss property							
7360	Other nonops income							
7370	Special charges							
7300	Nonops income/expen							

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Customer Ops-Mkting					
6611	Product management				N/A	N/A
6612	Sales				N/A	N/A
6613	Product advertising				N/A	N/A
6610	Marketing expense					
	Customer Ops-Servic					
6621	Call completion				N/A	N/A
6622	Number services				N/A	N/A
6623	Customer services				N/A	N/A
6620	Services expense					
	Corporate Operation					
6711	Executive				N/A	N/A
6712	Planning				N/A	N/A
6710	Executive & plannin					
6721	Accounting & financ				N/A	N/A
6722	External relations				N/A	N/A
6723	Human resources				N/A	N/A
6724	Information Managmt				N/A	N/A
6725	Legal				N/A	N/A
6726	Procurement				N/A	N/A
6727	Research & develop				N/A	N/A
6728	Other general & adm				N/A	N/A
6720	General & administr					
6790	Prov uncollect note					
	Other Ops Inc/Expen					
7110	Income custom work				N/A	N/A
7130	Return nonreg use				N/A	N/A
7140	Gain/loss foreign				N/A	N/A
7150	Gain/loss land/art				N/A	N/A
7160	Other ops gain/loss				N/A	N/A
7100	Other ops inc/expen					
	Operating Taxes					
7210	Ops inv tax cr-net				N/A	N/A
7220	Ops federal inc tax				N/A	N/A
7230	Ops state & local				N/A	N/A
7240	Ops other taxes				N/A	N/A
7250	Prov defer inc tax				N/A	N/A
7200	Operating taxes					
	Nonops income/expen					
7310	Dividend income				N/A	N/A
7320	Interest income				N/A	N/A
7330	Inc sinking/other				N/A	N/A
7340	AFUDC				N/A	N/A
7350	Gain/loss property				N/A	N/A
7360	Other nonops income				N/A	N/A
7370	Special charges				N/A	N/A
7300	Nonops income/expen					

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ARMIS JOINT COST REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION x
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned		Attributed		Generally Allocated	
			Regulated (c)	Nonreg. (d)	Regulated (e)	Nonreg. (f)	Regulated (g)	Nonreg. (h)
	Int & Related Items							
7510	Int on funded debt							
7520	Int exp-cap leases							
7530	Amort debt issuance							
7540	Other interest ded							
7500	Int & related items							
	Extraordinary Items							
7610	Extraord income crs							
7620	Extraord income chg							
7630	Current inc tax eff							
7640	Prov defer tax-net							
7600	Extraordinary items							
7910	Inc effcts diff-net			N/A	N/A	N/A	N/A	N/A
7990	Nonreg net income		N/A		N/A		N/A	
	Adjustments							
750	Total Expenses							
	PLANT-IN-SERVICE							
	Support Plant							
2111	Land							
2112	Motor vehicles							
2113	Aircraft							
2114	Special purpose veh							
2115	Garage work equip							
2116	Other work equip							
2121	Buildings							
2122	Furniture							
2123	Office equipment							
2124	Gen purpose comput							
2110	Land & support							
	Central Off-Switch							
2211	Analog elect switch							
2212	Digit elect switch							
2215	Electro-mech switch							
2210	Central off switch							
2220	Operator systems							

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Int & Related Items					
7510	Int on funded debt				N/A	N/A
7520	Int exp-cap leases				N/A	N/A
7530	Amort debt issuance				N/A	N/A
7540	Other interest ded				N/A	N/A
7500	Int & related items					
	Extraordinary Items					
7610	Extraord income crs				N/A	N/A
7620	Extraord income chg				N/A	N/A
7630	Current inc tax eff				N/A	N/A
7640	Prov defer tax-net				N/A	N/A
7600	Extraordinary items					
7910	Inc effcts diff-net		N/A	N/A		
7990	Nonreg net income	N/A		N/A	N/A	N/A
	Adjustments					
750	Total Expenses			N/A	N/A	N/A
	PLANT-IN-SERVICE					
	Support Plant					
2111	Land				N/A	N/A
2112	Motor vehicles				N/A	N/A
2113	Aircraft				N/A	N/A
2114	Special purpose veh				N/A	N/A
2115	Garage work equip				N/A	N/A
2116	Other work equip				N/A	N/A
2121	Buildings				N/A	N/A
2122	Furniture				N/A	N/A
2123	Office equipment				N/A	N/A
2124	Gen purpose comput				N/A	N/A
2110	Land & support					
	Central Off-Switch					
2211	Analog elect switch					
2212	Digit elect switch					
2215	Electro-mech switch					
2210	Central off switch					
2220	Operator systems					

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total (b)	Directly Assigned Regulated (c)	Directly Assigned Nonreg. (d)	Attributed Regulated (e)	Attributed Nonreg. (f)	Generally Allocated Regulated (g)	Generally Allocated Nonreg. (h)
	Central off-Trans							
2231	Radio systems							
2232	Circuit equipment							
2230	Transmission							
	Information O/T							
2311	Station apparatus							
2321	Customer prem wire							
2341	Large PBX							
2351	Public tel terminal							
2362	Other terminal							
2310	Information O/T							
	Cable & Wire Facil							
2411	Poles							
2421	Aerial cable							
2422	Underground cable							
2423	Buried cable							
2424	Submarine cable							
2425	Deep sea cable							
2426	Intrabldg ntwk cabl							
2431	Aerial wire							
2441	Conduit systems							
2410	Cable & wire facil							
	Amortizable Assets							
2681	Capital leases							
2682	Leasehold improv							
2680	Amort tangible asst							
2690	Intangibles							
2001	TPIS							
	OTHER INVESTMENTS							
2002	PHFTU							
2003	TPUC-short term							
2004	TPUC-long term							
2005	Plant acquis adjust							
1220	Material & supplies							
1438	Defer maint & retir							
1439	Deferred charges							
1500	Other jurisd assets							
230	IS Cash Working Cap	N/A	N/A	N/A	N/A	N/A	N/A	N/A
370	Total Investment							
	RESERVES							
	Accum Depreciation							
3100	Accum depreciation							
3200	Accum depr-PHFTU							
	Accum Amortization							
3410	Accum amort-cap lse							
3420	Accum amort-lse imp							
3400	Accum amort-tangibl							
3500	Accum amort-intang							
3600	Accum amort-other							
	Deferred Ops Inc Tx							
4100	Net Current Defer							
4340	Net Noncurrent defe							
	Other Deductions							
4040	Customers' deposits							
4120	Other accru liabil							
4360	Other deferred crs							
4370	Other jurisdiction							
495	Total Reserve							

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm YYYY To mmm YYYY TABLE I
COSA: xxxx

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title (a)	Total Regulated (i)	Total Nonreg. (j)	SNFA and Intra-co. Adjustments (k)	Other Adjustments (l)	Subject to Separations (m)
	Central off-Trans					
2231	Radio systems					
2232	Circuit equipment					
2230	Transmission					
	Information O/T					
2311	Station apparatus				N/A	N/A
2321	Customer prem wire				N/A	N/A
2341	Large PBX				N/A	N/A
2351	Public tel terminal				N/A	N/A
2362	Other terminal				N/A	N/A
2310	Information O/T					
	Cable & Wire Facil					
2411	Poles				N/A	N/A
2421	Aerial cable				N/A	N/A
2422	Underground cable				N/A	N/A
2423	Buried cable				N/A	N/A
2424	Submarine cable				N/A	N/A
2425	Deep sea cable				N/A	N/A
2426	Intrabldg ntwk cabl				N/A	N/A
2431	Aerial wire				N/A	N/A
2441	Conduit systems				N/A	N/A
2410	Cable & wire facil					
	Amortizable Assets					
2681	Capital leases				N/A	N/A
2682	Leasehold improve				N/A	N/A
2680	Amort tangible asst					
2690	Intangibles					
2001	TPIS					
	OTHER INVESTMENTS					
2002	PHPTU					
2003	TPUC-short term					
2004	TPUC-long term					
2005	Plant acquis adjust					
1220	Material & supplies					
1438	Defer maint & retic					
1439	Deferred charges					
1500	Other jurisd assets					
230	IS Cash Working Cap	N/A	N/A	N/A	N/A	
370	Total Investment					
	RESERVES					
	Accum Depreciation					
3100	Accum depreciation					
3200	Accum depr-PHPTU					
	Accum Amortization					
3410	Accum amort-cap lse				N/A	N/A
3420	Accum amort-lse imp				N/A	N/A
3400	Accum amort-tangibl					
3500	Accum amort-intang					
3600	Accum amort-other					
	Deferred Ops Inc Tx					
4100	Net Current Defer					
4340	Net Noncurrent defe					
	Other Deductions					
4040	Customers' deposits					
4120	Other accru liabil					
4360	Other deferred crs					
4370	Other jurisdiction					
495	Total Reserve					

CERTIFICATION

I certify that I am an officer of _____;
that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-03, the ARMIS Joint Cost Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "JC".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

   For example, the file name for the Confidential Version of the initial Joint Cost Report data file to be submitted by Illinois Bell to cover the calendar year 1988, would be LBIL88JC.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
JC	Joint Cost Report data file
.	decimal point
C	Confidential version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ___123, NOT 123___. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for row number fields, which will include a decimal point and one decimal place.

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. Data Record Descriptions

The seven data record types are described below. See pages 5 through 15 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 216 Type J1 records, followed by one or more Type C3 records, followed by zero or more Type F2 records, followed by zero or more Type E3 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, etc. See page 6 for record layout.
Record Type J1	Joint Cost Data Record	216 Type J1 records per file. One Type J1 record for each of the 216 rows shown on Pages 6 - 15 of the accompanying Report Definition. Each record contains data values for that particular account broken out by the columns described on Page 5 of the accompanying Report Definition. See pages 7 & 8 for record layout.
Record Type C3	Confidential Treatment Record	One or more Type C3 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 9 & 10 for record layout.
Record Type F2	Footnote Record	Optional. Zero or more Type F2 records per file. Contains explanatory footnote text. See page 11 & 12 for record layout.

Record Type E3	Erratum Record	Zero Type E3 records in the first submission of a year's data. One or more Type E3 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 13 & 14 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 15 for record layout. —

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88JC.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. — include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19890315	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
       1         2         3         4         5          . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789  . . . . .    Ruler line
Sample record:
1001,"LBIL","H1","LBIL88JC.C01",1988,0,19890315,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-03"	18-35	Always contains "FCC REPORT 43-03"— capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Dec 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                                  1         1
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample record:
1002,"LBIL","L1","FCC REPORT 43-03","Illinois Bell                ","Illinois          ","Jan 1988 to Dec 1988","XQ"
```

RECORD TYPE J1 - JOINT COST DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1046	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"J1"	13-16	Always contains the letter J capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	5200.0	18-23	Row number as identified on the accompanying Report Definition. Valid ranges: 230.0 to 750.0, 1220.0 to 7990.0 Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
5	Column (b) data	32592	25-33	This field contains the data corresponding to column (b) as shown on Pages 6 - 15 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	35-43	Column (c) data Format: see Field 5 above.
7	Column (d) data	5432	45-53	Column (d) data Format: see Field 5 above.
8	Column (e) data	5432	55-63	Column (e) data Format: see Field 5 above.
9	Column (f) data	5432	65-73	Column (f) data Format: see Field 5 above.
10	Column (g) data	5432	75-83	Column (g) data Format: see Field 5 above.
11	Column (h) data	5432	85-93	Column (h) data Format: see Field 5 above.

RECORD TYPE J1 - JOINT COST DATA RECORD (continued)

Field	Item	Example	Position	Description
12	Column (i) data	16296	95-103	Column (i) data Format: see Field 5 above.
13	Column (j) data	16296	105-113	Column (j) data Format: see Field 5 above.
14	Column (k) data	2716	115-123	Column (k) data Format: see Field 5 above.
15	Column (l) data	2716	125-133	Column (l) data Format: see Field 5 above.
16	Column (m) data	10864	135-143	Column (m) data Format: see Field 5 above.
17	End of Record Code	"XQ"	145-148	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F2 records (after the remaining Type J1 and C3 records) containing footnote text to explain the occasioning facts.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234
Sample records:
1003,"LBIL","J1",5001.0,     5432,     5432,   -99999,   -99999,   -99999,   -99999,   -99999,
1034,"LBIL","J1", 525.0,    10864,    10864,   -99999,   -99999,   -99999,   -99999,   -99999,
1046,"LBIL","J1",5200.0,    32592,     5432,     5432,     5432,     5432,     5432,     5432,
```

```
     1         1         1         1         1
9    0         1         2         3         4
5678901234567890123456789012345678901234567890123456789012345678
Continuation of sample records:
     5432,   -99999,     2716,   -99999,   -99999,"XQ"
    10864,   -99999,     2716,     2716,     5432,"XQ"
    16296,    16296,     2716,     2716,    10864,"XQ"
```

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1219	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C3"	13-16	Always contains the letter C capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for an entire column, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"B "	37-40	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 17. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C3 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"C "	42-45	.....
9	Third Column Label	"I "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".

Note: Fields 18 thru 26 are not used in this record in this data file.

27	End of Record Code	"XQ"	137-140	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1219,"LBIL","C3",1003,"I   ",5001.0,"B ","C ","I ",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,
1220,"LBIL","C3",1012,"I   ", 520.0,"B ","C ","I ",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,
1221,"LBIL","C3",1034,"I   ", 525.0,"ZZ",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,
1222,"LBIL","C3",9999,"I   ",9999.0,"L ",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,
1223,"LBIL","C3",9999,"I   ",9999.0,"M ",,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,
```

```
   1         1         1         1         1
9  0         1         2         3         4
78901234567890123456789012345678901234567890
Continuation of sample records:
,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,"XQ"
,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,"XQ"
,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,"XQ"
,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,"XQ"
,  ,,  ,,  ,,  ,,  ,,  ,,  ,,  ,,"XQ"
```

RECORD TYPE F2 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1224	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F2"	13-16	Always contains the letter F capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"C "	37-40	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F2 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	42-43	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	45-46	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text (spaces until pos. 104) "	48-104	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	106-109	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1224,"LBIL","F2",1003,"I   ",5001.0,"C ", 1, 1,"Footnote text for footnote 1                                  ","XQ"
1225,"LBIL","F2",1003,"I   ",5001.0,"C ", 1, 2,"continuation text for footnote 1                              ","XQ"
1226,"LBIL","F2",1003,"I   ",5001.0,"C ", 1, 3,"last line of footnote 1                                       ","XQ"
1227,"LBIL","F2",1034,"I   ", 525.0,"ZZ", 2, 1,"Footnote 2 pertains to all cols. of Table I row 5100         ","XQ"
1228,"LBIL","F2",9999,"I   ",9999.0,"K ", 3, 1,"Footnote 3 pertains to all rows of Table I column K           ","XQ"
1229,"LBIL","F2",9999,"I   ",9999.0,"M ", 4, 1,"Footnote 4 pertains to all rows of Table I column M           ","XQ"
```

RECORD TYPE E3 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1230	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E3"	13-16	Always contains the letter E capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	5001.0	30-35	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If an entire column, an entire table, or the entire submission was corrected, enter 9999.0. Format: right justified and space filled, with one decimal place. Since all applicable row numbers are integers, append .0 to each row number.
7	Column Label	"B "	37-40	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 17. Format: include quotation marks. left justified and space filled.

RECORD TYPE E3 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"C "	42-45	.....
9	Third Column Label	"I "	47-50	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	" "	132-135	..... Otherwise, enter " ".
				Note: Fields 18 thru 26 are not used in this record in this data file.
27	Footnote Number	1	137-138	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	140-143	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1230,"LBIL","E3",1003,"I   ",5001.0,"B ","C ","I ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1231,"LBIL","E3",1013,"I   ", 520.0,"B ","C ","I ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1232,"LBIL","E3",1033,"I   ", 525.0,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1233,"LBIL","E3",9999,"I   ",9999.0,"K ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1234,"LBIL","E3",9999,"I   ",9999.0,"M ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
   1         1         1         1         1
9  0         1         2         3         4
78901234567890123456789012345678901234567890123
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
"  ","  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1235	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1235,"LBIL","T1","John Doe                                        ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-03, the ARMIS Joint Cost Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., each Uncollectible Revenue item, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

E. **Page Layouts**

The forty-four page layouts are illustrated on pages 3 through 46. The paper report will consist of the following pages, in order:

	Illustrated on Page
Table I Pages 1.1 through 1.4	3 - 6
Table I Pages 2.1 through 2.4	7 - 10
Table I Pages 3.1 through 3.4	11 - 14
Table I Pages 4.1 through 4.4	15 - 18
Table I Pages 5.1 through 5.4	19 - 22
Table I Pages 6.1 through 6.4	23 - 26
Table I Pages 7.1 through 7.4	27 - 30
Table I Pages 8.1 through 8.4	31 - 34
Table I Pages 9.1 through 9.4	35 - 38
Table I Pages 10.1 through 10.4	39 - 42
The Confidential Treatment Table (at least one page and as many pages as needed)	43
The Footnote Table (at least one page and as many pages as needed)	44
The Erratum Table (for submission number 2 or higher, as many pages as needed)	45
The Certification Page	46

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	REVENUES				
	Local Network Svcs				
5001	Basic area revenue			N/A	
5002	Optional ext area			N/A	
5003	Cellular mobile			N/A	
5004	Other mobile servic			N/A	
510	Ba loc svc(A 5000)			N/A	
5010	Public telephone			N/A	
5040	Local private line			N/A	
5050	Customer premises			N/A	
5060	Other local exchang			N/A	
5069	Other local settles			N/A	
520	Ba loc svc			N/A	
	Network Access Svcs				
5081	End user			N/A	
5082	Switched access			N/A	
5083	Special access			N/A	
5084	State access			N/A	
5080	Network access			N/A	
	Toll Network Svcs				
5100	LD msg rev(Class A)			N/A	
5111	LD Inward-only			N/A	
5112	LD Outward-only			N/A	
5110	Unidirectional LD			N/A	

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
	REVENUES				
	Local Network Svcs				
5001	Basic area revenue	N/A	N/A	N/A	N/A
5002	Optional ext area	N/A	N/A	N/A	N/A
5003	Cellular mobile	N/A	N/A	N/A	N/A
5004	Other mobile servic	N/A	N/A	N/A	N/A
510	Ba loc svc(A 5000)	N/A	N/A	N/A	N/A
5010	Public telephone	N/A	N/A	N/A	N/A
5040	Local private line	N/A	N/A	N/A	N/A
5050	Customer premises	N/A	N/A	N/A	N/A
5060	Other local exchang	N/A	N/A	N/A	N/A
5069	Other local settles	N/A	N/A	N/A	N/A
520	Ba loc svc	N/A	N/A	N/A	N/A
	Network Access Svcs				
5081	End user	N/A	N/A	N/A	N/A
5082	Switched access	N/A	N/A	N/A	N/A
5083	Special access	N/A	N/A	N/A	N/A
5084	State access	N/A	N/A	N/A	N/A
5080	Network access	N/A	N/A	N/A	N/A
	Toll Network Svcs				
5100	LD msg rev(Class A)	N/A	N/A	N/A	N/A
5111	LD Inward-only	N/A	N/A	N/A	N/A
5112	LD Outward-only	N/A	N/A	N/A	N/A
5110	Unidirectional LD	N/A	N/A	N/A	N/A

... Ruler Line

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	REVENUES			
	Local Network Svcs			
5001	Basic area revenue		N/A	
5002	Optional ext area		N/A	
5003	Cellular mobile		N/A	
5004	Other mobile servic		N/A	
510	Ba loc svc (A 5000)		N/A	
5010	Public telephone		N/A	
5040	Local private line		N/A	
5050	Customer premises		N/A	
5060	Other local exchang		N/A	
5069	Other local settles		N/A	
520	Ba loc svc		N/A	
	Network Access Svcs			
5081	End user		N/A	
5082	Switched access		N/A	
5083	Special access		N/A	
5084	State access		N/A	
5080	Network access		N/A	
	Toll Network Svcs			
5100	LD msg rev(Class A)		N/A	
5111	LD Inward-only		N/A	
5112	LD Outward-only		N/A	
5110	Unidirectional LD		N/A	

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FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 1.4 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	REVENUES				
	Local Network Svcs				
5001	Basic area revenue		N/A	N/A	
5002	Optional ext area		N/A	N/A	
5003	Cellular mobile		N/A	N/A	
5004	Other mobile servic		N/A	N/A	
510	Ba loc svc (A 5000)		N/A	N/A	
5010	Public telephone		N/A	N/A	
5040	Local private line		N/A	N/A	
5050	Customer premises		N/A	N/A	
5060	Other local exchang		N/A	N/A	
5069	Other local settles		N/A	N/A	
520	Ba loc svc				
	Network Access Svcs				
5081	End user				
5082	Switched access				
5083	Special access				
5084	State access				
5080	Network access				
	Toll Network Svcs				
5100	LD msg rev(Class A)		N/A	N/A	
5111	LD Inward-only		N/A	N/A	
5112	LD Outward-only		N/A	N/A	
5110	Unidirectional LD		N/A	N/A	

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COSA: xxxx PAGE 2.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
5121	Subvce LD pvt ntwk			N/A	
5122	Vce LD pvt network			N/A	
5123	Audio LD pvt ntwk			N/A	
5124	Vidio LD pvt ntwk			N/A	
5125	Digital LD pvt ntwk			N/A	
5126	LD pvt ntwk switch			N/A	
5128	Other LD pvt ntwk			N/A	
5129	Other LD pvt settle			N/A	
5120	LD private network			N/A	
5160	Other LD			N/A	
5169	Other LD settlement			N/A	
525	LD ntwk svcs rev			N/A	
	Miscellaneous				
5230	Directory			N/A	
5240	Rent			N/A	
5250	Corporate operation			N/A	
5261	Special billing arr			N/A	
5262	Customer operations			N/A	
5263	Plant operations			N/A	
5264	Other incident reg			N/A	
5269	Other settlements			N/A	
5260	Misc. (Class A)			N/A	
5270	Carrier bill & coll			N/A	
5280	Nonregulated		N/A		
5200	Miscellanous				
	Uncollectible revs				
5301	Uncollect-telecomm				
5302	Uncollect-other				
5300	Uncollectible rev				
530	Net Revenues				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 2.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
5121	Subvce LD pvt ntwk	N/A	N/A	N/A	N/A
5122	Vce LD pvt network	N/A	N/A	N/A	N/A
5123	Audio LD pvt ntwk	N/A	N/A	N/A	N/A
5124	Vidio LD pvt ntwk	N/A	N/A	N/A	N/A
5125	Digital LD pvt ntwk	N/A	N/A	N/A	N/A
5126	LD pvt ntwk switch	N/A	N/A	N/A	N/A
5128	Other LD pvt ntwk	N/A	N/A	N/A	N/A
5129	Other LD pvt settle	N/A	N/A	N/A	N/A
5120	LD private network	N/A	N/A	N/A	N/A
5160	Other LD	N/A	N/A	N/A	N/A
5169	Other LD settlement	N/A	N/A	N/A	N/A
525	LD ntwk svcs rev	N/A	N/A	N/A	N/A
	Miscellaneous				
5230	Directory	N/A	N/A	N/A	N/A
5240	Rent	N/A	N/A	N/A	N/A
5250	Corporate operation	N/A	N/A	N/A	N/A
5261	Special billing arr	N/A	N/A	N/A	N/A
5262	Customer operations	N/A	N/A	N/A	N/A
5263	Plant operations	N/A	N/A	N/A	N/A
5264	Other incident reg	N/A	N/A	N/A	N/A
5269	Other settlements	N/A	N/A	N/A	N/A
5260	Misc. (Class A)	N/A	N/A	N/A	N/A
5270	Carrier bill & coll	N/A	N/A	N/A	N/A
5280	Nonregulated	N/A	N/A	N/A	N/A
5200	Miscellanous				
	Uncollectible revs				
5301	Uncollect-telecomm				
5302	Uncollect-other				
5300	Uncollectible rev				
530	Net Revenues				

... Ruler Line

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 2.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
5121	Subvce LD pvt ntwk		N/A	
5122	Vce LD pvt network		N/A	
5123	Audio LD pvt ntwk		N/A	
5124	Vidio LD pvt ntwk		N/A	
5125	Digital LD pvt ntwk		N/A	
5126	LD pvt ntwk switch		N/A	
5128	Other LD pvt ntwk		N/A	
5129	Other LD pvt settle		N/A	
5120	LD private network		N/A	
5160	Other LD		N/A	
5169	Other LD settlement		N/A	
525	LD ntwk svcs rev		N/A	
	Miscellaneous			
5230	Directory		N/A	
5240	Rent		N/A	
5250	Corporate operation		N/A	
5261	Special billing arr		N/A	
5262	Customer operations		N/A	
5263	Plant operations		N/A	
5264	Other incident reg		N/A	
5269	Other settlements		N/A	
5260	Misc. (Class A)		N/A	
5270	Carrier bill & coll		N/A	
5280	Nonregulated	N/A		
5200	Miscellanous			
	Uncollectible revs			
5301	Uncollect-telecomm			
5302	Uncollect-other			
5300	Uncollectible rev -			
530	Net Revenues			

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
5121	Subvce LD pvt ntwk		N/A	N/A	
5122	Vce LD pvt network		N/A	N/A	
5123	Audio LD pvt ntwk		N/A	N/A	
5124	Vidio LD pvt ntwk		N/A	N/A	
5125	Digital LD pvt ntwk		N/A	N/A	
5126	LD pvt ntwk switch		N/A	N/A	
5128	Other LD pvt ntwk		N/A	N/A	
5129	Other LD pvt settle		N/A	N/A	
5120	LD private network		N/A	N/A	
5160	Other LD		N/A	N/A	
5169	Other LD settlement		N/A	N/A	
525	LD ntwk svcs rev				
	Miscellaneous				
5230	Directory		N/A	N/A	
5240	Rent		N/A	N/A	
5250	Corporate operation		N/A	N/A	
5261	Special billing arr		N/A	N/A	
5262	Customer operations		N/A	N/A	
5263	Plant operations		N/A	N/A	
5264	Other incident reg		N/A	N/A	
5269	Other settlements		N/A	N/A	
5260	Misc. (Class A)		N/A	N/A	
5270	Carrier bill & coll		N/A	N/A	
5280	Nonregulated	N/A	N/A	N/A	
5200	Miscellanous				
	Uncollectible revs				
5301	Uncollect-telecomm		N/A	N/A	
5302	Uncollect-other		N/A	N/A	
5300	Uncollectible rev-				
530	Net Revenues				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	EXPENSES				
	Plant Specific				
6112	Motor vehicle				
6113	Aircraft				
6114	Special purpose veh				
6115	Garage work equip				
6116	Other work equip				
6110	Network support				
6121	Land & building				
6122	Furniture & artwork				
6123	Office equipment				
6124	Gen purpose comput				
6120	General support				
6211	Analog electronic				
6212	Digital electronic				
6215	Electro-mechanical				
6210	Central office-swit				
6220	Operator systems				
	Central office tran				
6231	Radio systems				
6232	Circuit equipment				
6230	Central office tran				
6311	Station apparatus				
6341	Large PBX				
6351	Public tel tmnl equ				
6362	Other terminal equi				
6310	Information O/T				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 3.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated		
		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
	EXPENSES					
	Plant Specific					
6112	Motor vehicle					
6113	Aircraft					
6114	Special purpose veh					
6115	Garage work equip					
6116	Other work equip					
6110	Network support					
6121	Land & building					
6122	Furniture & artwork					
6123	Office equipment					
6124	Gen purpose comput					
6120	General support					
6211	Analog electronic					
6212	Digital electronic					
6215	Electro-mechanical					
6210	Central office-swit					
6220	Operator systems					
	Central office tran					
6231	Radio systems					
6232	Circuit equipment					
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6311	Station apparatus					
6341	Large PBX					
6351	Public tel tmnl equ					
6362	Other terminal equi					
6310	Information O/T					

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 3.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	EXPENSES			
	Plant Specific			
6112	Motor vehicle			
6113	Aircraft			
6114	Special purpose veh			
6115	Garage work equip			
6116	Other work equip			
6110	Network support			
6121	Land & building			
6122	Furniture & artwork			
6123	Office equipment			
6124	Gen purpose comput			
6120	General support			
6211	Analog electronic			
6212	Digital electronic			
6215	Electro-mechanical			
6210	Central office-swit			
6220	Operator systems			
	Central Office Tran			
6231	Radio systems			
6232	Circuit equipment			
6230	Central office tran			
6311	Station apparatus			
6341	Large PBX			
6351	Public tel tmnl equ			
6362	Other terminal equi			
6310	Information O/T			

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Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	EXPENSES				
	Plant Specific				
6112	Motor vehicle		N/A	N/A	
6113	Aircraft		N/A	N/A	
6114	Special purpose veh		N/A	N/A	
6115	Garage work equip		N/A	N/A	
6116	Other work equip		N/A	N/A	
6110	Network support				
6121	Land & building		N/A	N/A	
6122	Furniture & artwork		N/A	N/A	
6123	Office equipment		N/A	N/A	
6124	Gen purpose comput		N/A	N/A	
6120	General support				
6211	Analog electronic		N/A	N/A	
6212	Digital electronic		N/A	N/A	
6215	Electro-mechanical		N/A	N/A	
6210	Central office-swit				
6220	Operator systems				
	Central Office Tran				
6231	Radio systems		N/A	N/A	
6232	Circuit equipment		N/A	N/A	
6230	Central office tran				
6311	Station apparatus		N/A	N/A	
6341	Large PBX		N/A	N/A	
6351	Public tel tmnl equ		N/A	N/A	
6362	Other terminal equi		N/A	N/A	
6310	Information O/T				

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COSA: xxxx PAGE 4.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned	
			Regulated	Nonreg.
	(a)	(b)	(c)	(d)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
6411	Poles			
6421	Aerial cable			
6422	Undgerground cable			
6423	Buried cable			
6424	Submarine cable			
6425	Deep sea cable			
6426	Intrabldg ntwk cabl			
6431	Aerial wire			
6441	Conduit systems			
6410	Cable & wire			
	Plant Non-Specific			
6511	PHFTU			
6512	Provisioning			
6510	Other PP&E expense			
6531	Power			
6532	Network administrat			
6533	Testing			
6534	Plant ops administr			
6535	Engineering			
6530	Network operations			
6540	Access			
	Depreciate/Amortize			
6561	Depreciation-TPIS			
6562	Depreciation-PHFTU			
6563	Amortization-tangib			
6564	Amortization-intang			
6565	Amortization-other			
6560	Depreciate/Amortize			

... Ruler Line

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COSA: xxxx PAGE 4.2 OF 10.4

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(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated	
		Regulated	Nonreg.	Regulated	Nonreg.
	(a)	(e)	(f)	(g)	(h)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789
6411	Poles				
6421	Aerial cable				
6422	Undgerground cable				
6423	Buried cable				
6424	Submarine cable				
6425	Deep sea cable				
6426	Intrabldg ntwk cabl				
6431	Aerial wire				
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	Depreciate/Amortize				
6561	Depreciation-TPIS				
6562	Depreciation-PHFTU				
6563	Amortization-tangib				
6564	Amortization-intang				
6565	Amortization-other				
6560	Depreciate/Amortize				

... Ruler Line

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 4.3 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
6411	Poles			
6421	Aerial cable			
6422	Undgerground cable			
6423	Buried cable			
6424	Submarine cable			
6425	Deep sea cable			
6426	Intrabldg ntwk cabl			
6431	Aerial wire			
6441	Conduit systems			
6410	Cable & wire			
	Plant Non-Specific			
6511	PHFTU			
6512	Provisioning			
6510	Other PP&E expense			
6531	Power			
6532	Network administrat			
6533	Testing			
6534	Plant ops administr			
6535	Engineering			
6530	Network operations			
6540	Access			
	Depreciate/Amortize			
6561	Depreciation-TPIS			
6562	Depreciation-PHFTU			
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6565	Amortization-other			
6560	Depreciate/Amortize			

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
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6411	Poles		N/A	N/A	
6421	Aerial cable		N/A	N/A	
6422	Undgerground cable		N/A	N/A	
6423	Buried cable		N/A	N/A	
6424	Submarine cable		N/A	N/A	
6425	Deep sea cable		N/A	N/A	
6426	Intrabldg ntwk cabl		N/A	N/A	
6431	Aerial wire		N/A	N/A	
6441	Conduit systems		N/A	N/A	
6410	Cable & wire				
	Plant Non-Specific				
6511	PHFTU		N/A	N/A	
6512	Provisioning		N/A	N/A	
6510	Other PP&E expense				
6531	Power		N/A	N/A	
6532	Network administrat		N/A	N/A	
6533	Testing		N/A	N/A	
6534	Plant ops administr		N/A	N/A	
6535	Engineering		N/A	N/A	
6530	Network operations				
6540	Access				
	Depreciate/Amortize				
6561	Depreciation-TPIS		N/A	N/A	
6562	Depreciation-PHFTU		N/A	N/A	
6563	Amortization-tangib		N/A	N/A	
6564	Amortization-intang		N/A	N/A	
6565	Amortization-other		N/A	N/A	
6560	Depreciate/Amortize				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned	
			Regulated	Nonreg.
	(a)	(b)	(c)	(d)
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789
	Customer Ops-Mkting			
6611	Product management			
6612	Sales			
6613	Product advertising			
6610	Marketing expense			
	Customer Ops-Servic			
6621	Call completion			
6622	Number services			
6623	Customer services			
6620	Services expense			
	Corporate Operation			
6711	Executive			
6712	Planning			
6710	Executive & plannin			
6721	Accounting & financ			
6722	External relations			
6723	Human resources			
6724	Information Managmt			
6725	Legal			
6726	Procurement			
6727	Research & develop			
6728	Other general & adm			
6720	General & administr			
6790	Prov uncollect note			

... Ruler Line

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(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated		
		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxx Customer Ops-Mkting	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
6611	Product management					
6612	Sales					
6613	Product advertising					
6610	Marketing expense					
	Customer Ops-Servic					
6621	Call completion					
6622	Number services					
6623	Customer services					
6620	Services expense					
	Corporate Operation					
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6721	Accounting & financ					
6722	External relations					
6723	Human resources					
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(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Customer Ops-Mkting			
6611	Product management			
6612	Sales			
6613	Product advertising			
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	Corporate Operation			
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6712	Planning			
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6721	Accounting & financ			
6722	External relations			
6723	Human resources			
6724	Information Managmt			
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6726	Procurement			
6727	Research & develop			
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx Customer Ops-Mkting	123,456,789	123,456,789	123,456,789	... Ruler Line
6611	Product management		N/A	N/A	
6612	Sales		N/A	N/A	
6613	Product advertising		N/A	N/A	
6610	Marketing expense				
	Customer Ops-Servic				
6621	Call completion		N/A	N/A	
6622	Number services		N/A	N/A	
6623	Customer services		N/A	N/A	
6620	Services expense				
	Corporate Operation				
6711	Executive		N/A	N/A	
6712	Planning		N/A	N/A	
6710	Executive & plannin				
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6722	External relations		N/A	N/A	
6723	Human resources		N/A	N/A	
6724	Information Managmt		N/A	N/A	
6725	Legal		N/A	N/A	
6726	Procurement		N/A	N/A	
6727	Research & develop		N/A	N/A	
6728	Other general & adm		N/A	N/A	
6720	General & administr				
6790	Prov uncollect note				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx Other Ops Inc/Expen	123,456,789	123,456,789	123,456,789	... Ruler Line
7110	Income custom work				
7130	Return nonreg use				
7140	Gain/loss foreign				
7150	Gain/loss land/art				
7160	Other ops gain/loss				
7100	Other ops inc/expen				
	Operating Taxes				
7210	Ops inv tax cr-net				
7220	Ops federal inc tax				
7230	Ops state & local				
7240	Ops other taxes				
7250	Prov defer inc tax				
7200	Operating taxes				
	Nonops income/expen				
7310	Dividend income				
7320	Interest income				
7330	Inc sinking/other				
7340	AFUDC				
7350	Gain/loss property				
7360	Other nonops income				
7370	Special charges				
7300	Nonops income/expen				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated		
		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
	Other Ops Inc/Expen					—
7110	Income custom work					
7130	Return nonreg use					
7140	Gain/loss foreign					
7150	Gain/loss land/art					
7160	Other ops gain/loss					
7100	Other ops inc/expen					
	Operating Taxes					
7210	Ops inv tax cr-net					
7220	Ops federal inc tax					
7230	Ops state & local					
7240	Ops other taxes					
7250	Prov defer inc tax					
7200	Operating taxes					
	Nonops income/expen					
7310	Dividend income					
7320	Interest income					
7330	Inc sinking/other					
7340	AFUDC					
7350	Gain/loss property					
7360	Other nonops income					
7370	Special charges					
7300	Nonops income/expen					

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xxxxxxxxxxx VERSION
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
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	Operating Taxes			
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7370	Special charges			
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx Other Ops Inc/Expen	123,456,789	123,456,789	123,456,789	... Ruler Line
7110	Income custom work		N/A	N/A	
7130	Return nonreg use		N/A	N/A	
7140	Gain/loss foreign		N/A	N/A	
7150	Gain/loss land/art		N/A	N/A	
7160	Other ops gain/loss		N/A	N/A	
7100	Other ops inc/expen				
	Operating Taxes				
7210	Ops inv tax cr-net		N/A	N/A	
7220	Ops federal inc tax		N/A	N/A	
7230	Ops state & local		N/A	N/A	
7240	Ops other taxes		N/A	N/A	
7250	Prov defer inc tax		N/A	N/A	
7200	Operating taxes				
	Nonops income/expen				
7310	Dividend income		N/A	N/A	
7320	Interest income		N/A	N/A	
7330	Inc sinking/other		N/A	N/A	
7340	AFUDC		N/A	N/A	
7350	Gain/loss property		N/A	N/A	
7360	Other nonops income		N/A	N/A	
7370	Special charges		N/A	N/A	
7300	Nonops income/expen				

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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx Int & Related Items	123,456,789	123,456,789	123,456,789	... Ruler Line
7510	Int on funded debt				
7520	Int exp-cap leases				
7530	Amort debt issuance				
7540	Other interest ded				
7500	Int & related items				
	Extraordinary Items				
7610	Extraord income crs				
7620	Extraord income chg				
7630	Current inc tax eff				
7640	Prov defer tax-net				
7600	Extraordinary items				
7910	Inc effcts diff-net			N/A	
7990	Nonreg net income		N/A		
	Adjustments				
750	Total Expenses				

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TABLE I - REGULATED/NONREGULATED DATA
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Row/ Acct. Number	Account Title	Attributed		Generally Allocated		
		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxxx Int & Related Items	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
7510	Int on funded debt					
7520	Int exp-cap leases					
7530	Amort debt issuance					
7540	Other interest ded					
7500	Int & related items					
	Extraordinary Items					
7610	Extraord income crs					
7620	Extraord income chg					
7630	Current inc tax eff					
7640	Prov defer tax-net					
7600	Extraordinary items					
7910	Inc effcts diff-net	N/A	N/A	N/A	N/A	
7990	Nonreg net income	N/A		N/A		
	Adjustments					
750	Total Expenses					

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TABLE I - REGULATED/NONREGULATED DATA
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Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx Int & Related Items	123,456,789	123,456,789	... Ruler Line
7510	Int on funded debt			
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7500	Int & related items			
	Extraordinary Items			
7610	Extraord income crs			
7620	Extraord income chg			
7630	Current inc tax eff			
7640	Prov defer tax-net			
7600	Extraordinary items			
7910	Inc effcts diff-net		N/A	
7990	Nonreg net income	N/A		
	Adjustments			
750	Total Expenses			

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	Extraordinary Items				
7610	Extraord income crs		N/A	N/A	
7620	Extraord income chg		N/A	N/A	
7630	Current inc tax eff		N/A	N/A	
7640	Prov defer tax-net		N/A	N/A	
7600	Extraordinary items				
7910	Inc effcts diff-net	N/A			
7990	Nonreg net income	N/A	N/A	N/A	
	Adjustments				
750	Total Expenses	N/A	N/A	N/A	

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Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	PLANT-IN-SERVICE				
	Support Plant				
2111	Land				
2112	Motor vehicles				
2113	Aircraft				
2114	Special purpose veh				
2115	Garage work equip				
2116	Other work equip				
2121	Buildings				
2122	Furniture				
2123	Office equipment				
2124	Gen purpose comput				
2110	Land & support				
	Central Off-Switch				
2211	Analog elect switch				
2212	Digit elect switch				
2215	Electro-mech switch				
2210	Central off switch				
2220	Operator systems				

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		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
	PLANT-IN-SERVICE					
	Support Plant					
2111	Land					
2112	Motor vehicles					
2113	Aircraft					
2114	Special purpose veh					
2115	Garage work equip					
2116	Other work equip					
2121	Buildings					
2122	Furniture					
2123	Office equipment					
2124	Gen purpose comput					
2110	Land & support					
	Central Off-Switch					
2211	Analog elect switch					
2212	Digit elect switch					
2215	Electro-mech switch					
2210	Central off switch					
2220	Operator systems					

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	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	PLANT-IN-SERVICE			
	Support Plant			
2111	Land			
2112	Motor vehicles			
2113	Aircraft			
2114	Special purpose veh			
2115	Garage work equip			
2116	Other work equip			
2121	Buildings			
2122	Furniture			
2123	Office equipment			
2124	Gen purpose comput			
2110	Land & support			
	Central Off-Switch			
2211	Analog elect switch			
2212	Digit elect switch			
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Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx PLANT-IN-SERVICE	123,456,789	123,456,789	123,456,789	... Ruler Line
	Support Plant				
2111	Land		N/A	N/A	
2112	Motor vehicles		N/A	N/A	
2113	Aircraft		N/A	N/A	
2114	Special purpose veh		N/A	N/A	
2115	Garage work equip		N/A	N/A	
2116	Other work equip		N/A	N/A	
2121	Buildings		N/A	N/A	
2122	Furniture		N/A	N/A	
2123	Office equipment		N/A	N/A	
2124	Gen purpose comput		N/A	N/A	
2110	Land & support				
	Central Off-Switch				
2211	Analog elect switch				
2212	Digit elect switch				
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2220	Operator systems				

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FCC REPORT 43-03
ARMIS JOINT COST REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 9.1 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total	Directly Assigned		
			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Central off-Trans				
2231	Radio systems				
2232	Circuit equipment				
2230	Transmission				
	Information O/T				
2311	Station apparatus				
2321	Customer prem wire				
2341	Large PBX				
2351	Public tel terminal				
2362	Other terminal				
2310	Information O/T				
	Cable & Wire Facil				
2411	Poles				
2421	Aerial cable				
2422	Underground cable				
2423	Buried cable				
2424	Submarine cable				
2425	Deep sea cable				
2426	Intrabldg ntwk cabl				
2431	Aerial wire				
2441	Conduit systems				
2410	Cable & wire facil				
	Amortizable Assets				
2681	Capital leases				
2682	Leasehold improve				
2680	Amort tangible asst				
2690	Intangibles				
2001	TPIS				

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PERIOD: From mmm yyyy To mmm yyyy TABLE I
COSA: xxxx PAGE 9.2 OF 10.4

TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Attributed		Generally Allocated		
		Regulated	Nonreg.	Regulated	Nonreg.	
	(a)	(e)	(f)	(g)	(h)	
1234	xxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	123,456,789	... Ruler Line
	Central off-Trans					
2231	Radio systems					
2232	Circuit equipment					
2230	Transmission					
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2310	Information O/T					
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2424	Submarine cable					
2425	Deep sea cable					
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2680	Amort tangible asst					
2690	Intangibles					
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	Total Regulated	Total Nonreg.	
	(a)	(i)	(j)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	... Ruler Line
	Central off-Trans			
2231	Radio systems			
2232	Circuit equipment			
2230	Transmission			
	Information O/T			
2311	Station apparatus			
2321	Customer prem wire			
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TABLE I - REGULATED/NONREGULATED DATA
(Dollars in thousands)

Row/ Acct. Number	Account Title	SNFA and Intra-co. Adjustments	Other Adjustments	Subject to Separations	
	(a)	(k)	(l)	(m)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Central off-Trans				
2231	Radio systems				
2232	Circuit equipment				
2230	Transmission				
	Information O/T				
2311	Station apparatus		N/A	N/A	
2321	Customer prem wire		N/A	N/A	
2341	Large PBX		N/A	N/A	
2351	Public tel terminal		N/A	N/A	
2362	Other terminal		N/A	N/A	
2310	Information O/T				
	Cable & Wire Facil				
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			Regulated	Nonreg.	
	(a)	(b)	(c)	(d)	
1234	xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	OTHER INVESTMENTS				
2002	PHFTU				
2003	TPUC-short term				
2004	TPUC-long term				
2005	Plant acquis adjust				
1220	Material & supplies				
1438	Defer maint & retir				
1439	Deferred charges				
1500	Other jurisd assets				
230	IS Cash Working Cap	N/A	N/A	N/A	
370	Total Investment				
	RESERVES				
	Accum Depreciation				
3100	Accum depreciation				
3200	Accum depr-PHFTU				
	Accum Amortization				
3410	Accum amort-cap lse				
3420	Accum amort-lse imp				
3400	Accum amort-tangibl				
3500	Accum amort-intang				
3600	Accum amort-other				
	Deferred Ops Inc Tx				
4100	Net Current Defer				
4340	Net Noncurrent defe				
	Other Deductions				
4040	Customers' deposits				
4120	Other accru liabil				
4360	Other deferred crs				
4370	Other jurisdiction				
495	Total Reserve				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x ... Ruler Lin

sample entries:

I	5001	B, C, I
I	520	B, C, I
I	525	ALL
I	ALL	L
I	ALL	M

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

```
FCC REPORT 43-03                                          Approved by OMB
ARMIS JOINT COST REPORT                                   3060-0395
                                                          Expires 10/31/90

COMPANY:      xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx              xxxxxxxxxxxx VERSION
STUDY AREA:   xxxxxxxxxxxxxxxxxxxx                        SUBMISSION x
PERIOD:       From mmm yyyy to mmm yyyy                   FOOTNOTE TABLE
COSA:         xxxx                                        PAGE 1 OF x
                                FOOTNOTE TABLE

Table Row   Col FN# Footnote
---- ------ --- -- ------------------------------------------------------
 (a)  (b)   (c) (d)    (e)
xxxx 1234.1 xxx  12 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:
   I 5001   C     1 Footnote text for footnote 1
                    continuation text for footnote 1
                    last line of footnote 1
   I  525   ALL   2 Footnote 2 pertains to all cols. of Table I row 5100
   I  ALL   K     3 Footnote 3 pertains to all rows of Table I column K
   I  ALL   M     4 Footnote 4 pertains to all rows of Table I column M

                                        -OR-
                    THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.
```

FCC REPORT 43-03
ARMIS JOINT COST REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy ERRATUM TABLE
COSA: xxxx PAGE 1 OF x

ERRATUM TABLE

Table (a)	Row (b)	Column(s) (c)	FN# (d)	
xxxx	1234.1	x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line

sample entries:

I	5001	B, C, I	1	
I	520	B, C, I		—
I	525	ALL	2	
I	ALL	K	3	
I	ALL	M	4	

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
Bell South			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabama	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific Telesis			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company	Operating Company	Study Area	Study Area Code
U.S. West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Alascom, Inc.		- Alaska	AKAK
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Illinois	- Illinois	CEIL
	3. of Nevada	- Nevada	CENV
	4. of Virginia	- Virginia	CEVA
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of Illinois	- Illinois	COIL
	3. Contel of Missouri	- Missouri	COMO
	4. Contel of New York	- New York	CONY
	5. Contel of Texas	- Texas	COTX
	6. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTTC
1. General Telephone Company of California		- California	GTCA
2. General Telephone Company of Florida		- Florida	GTFL
3. General Telephone Company of the Northwest, Inc.			GTNW
		- Idaho & Montana	GTNA
		- Idaho	GTID
		- Montana	GTMT
		- OR, WA & Wstn CA	GTNB
		- Oregon	GTOR
		- Washington	GTWA
		- CA - West Coast	GNCA
4. General Telephone Company of the South			GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5. General Telephone Company of the Southwest		GTSW
		- Arkansas	GTAR
		- New Mexico	GTNM
		- Oklahoma	GTOK
		- Texas	GTTX
	6. GTE of the North, Inc.		GTMW
		- Illinois	GTIL
		- Indiana	GTIN
		- Iowa	GTIA
		- Michigan	GTMI
		- Minnesota	GTMN
		- Missouri	GTMO
		- Nebraska (also serving Kansas)	GTNE
		- Ohio	GTOH
		- Pennsylvania	GTPA
		- Wisconsin	GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Puerto Rico Telephone Company		- Puerto Rico	PRPR
Rochester Telephone Corporation		- New York	RTNY
Southern New England Telephone		- Connecticut	SNCT
United Telephone System			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. United Tel. Co. of Missouri	- Missouri	UTMO
	4. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	5. United Tel. Co. of Ohio	- Ohio	UTOH
	6. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	7. United Inter-Mountain Tel. Co.		UTIM
		- Tennessee	UTTN
		- Virginia	UTVA
Total Independent Companies			TICO
Total Industry			TOTL

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